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EDUCATION AND TRAINING

# **THE NATIONAL SHIPBUILDING RESEARCH PROGRAM**

## **Shipyard Title V Permit Application**

U.S. DEPARTMENT OF THE NAVY  
CARDEROCK DIVISION,  
NAVAL SURFACE WARFARE CENTER

in cooperation with  
National Steel and Shipbuilding Company  
San Diego, California

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**FINAL REPORT**

**SHIPYARD TITLE V PERMIT APPLICATION**

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Under the  
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February 1997

# Shipyard Title V Permit Application Manual

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## CHAPTER 1

### INTRODUCTION

#### I. NSRP'S Title V Permitting Project

This Shipyard Title V Permit Application Manual was prepared as part of NSRP SP-1 Project 94-1. That project has also provided other interim assistance to shipyards as Title V programs have been developed and implemented.

Title V of the 1990 Clean Air Act Amendments (codified at 42 U.S.C. Chapter 85, Subchapter V, §7661 *et seq.*) requires certain existing facilities that emit regulated air pollutants to apply for new or upgraded "operating" permits for day-to-day air emissions. A facility that fails to submit a timely and complete Title V permit application when required to do so may not legally operate. 1/ The net effects of the Title V program will vary widely across facilities, depending on the underlying air pollution control requirements that apply to the facility, the terms of any existing air permits, and the case-by-case decisions of state and local permitting agencies and the U.S. EPA.

U.S. EPA regulations implementing this program are found at 40 C.F.R. Part 70 (for authorized state programs) and Part 71 (for permits issued by EPA). In all states, Title V permit applications must provide at least the minimum information specified by EPA. Title V permits must also meet minimum federal requirements. However, authorized Title V programs are actually administered under state or regional regulations that are approved by EPA, and not under federal regulations. These state Title V permitting programs vary significantly.

This manual provides guidance and specific tools for determining whether a Title V permit application is required for a facility, and for preparing a permit application. Work products prepared as part of this NSRP project that were still timely and relevant in August, 1996 are incorporated into or attached to this manual. Interim work products that have been rendered obsolete by Title V and MACT developments have been omitted.2/

This manual can address Title V permit application issues only in general terms. Specific state (or regional) regulations and permit application materials must be used when preparing any

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1/ This creates the potential for Title V to be used as a potent weapon by citizens or competitors, where applications are not submitted or are submitted late.

2/ Examples include work intended to facilitate shipyard comments on the proposed Marine Coatings NESHAP, some work on Potential to Emit that predated recent court decisions, and updates on the status the Title V program.

Title V permit application. However, even these materials must be used with caution, because U.S. EPA and state agency guidance is unusually important under this program. EPA guidance “clarified” many permit application issues during 1995 and 1996, after many state programs had been approved. This EPA guidance has the potential to substantially streamline the permit application process, but is it applicable to state programs only if states choose to apply it.<sup>3/</sup> Many states have implemented this EPA guidance without revising their program regulations and application forms. Thus, some information requested on “older” permit application forms may not need to be submitted, at least for some emissions units. Unnecessary application expense can be avoided by meeting with the permitting agency early in the application process, to discuss agency expectations and information requirements, and to determine whether information already provided to or compiled by the agency is sufficient for some purposes.

## II. Summary And Flow Chart Of The Title V Permitting Process

Figure 1 is a simplified flow chart of the initial Title V permit application, review, issuance, and challenge process. The chart presumes the use of some strategies that are recommended in this manual for facilities that must submit permit applications.

Work on a Title V permit application should begin only after confirming that a facility is subject to Title V. Applicability determinations are discussed in Chapters 2 and 4 of this manual.

The first step in preparing a Title V permit application is to identify the emissions units and regulatory requirements that must be addressed in the application. “Significant” emissions units must be addressed in the application in some detail. In most jurisdictions “insignificant” units need only be identified, and “trivial” units need not be mentioned. AH “applicable requirements” must be identified for “significant” units. Under EPA’s regulations “applicable requirements” encompasses only federally enforceable requirements, and not additional or more stringent requirements that a state may impose on its own. However, most state programs still require information on these “state only” requirements in Title V permit applications. See Chapter 5 of this manual for more detail.

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<sup>3/</sup> It is important to remember that guidance is only a statement of what EPA thinks its rules mean, and cannot amend rules. Some aspects of EPA’s “White Paper” guidance, discussed below, may not be consistent with 40 CFR part 70. While EPA is unlikely to take actions that are inconsistent with its own recent guidance, and industry has no incentive to dispute EPA’s more flexible current interpretations, lawsuits by citizens could assert contrary interpretations. In any lawsuit or enforcement action, EPA guidance would be considered by the court but would not be binding. Guidance that has been consistently applied for a long period of time is typically treated with deference by courts; guidance that changes direction without resort to a rulemaking process has less weight.

Experience has shown that many facilities discover unpermitted emissions units, neglected requirements, or compliance problems when conducting the review described above. The best procedure in these circumstances is to correct these problems before a permit application is submitted, because uncorrected problems will need to be addressed in several sections of the permit application. These “admissions” will be noted by the agency and EPA and will be available to the public. Submitting a permit application confers no immunity from enforcement action or citizen suits based on such violations.

The initial permit application must provide information on significant units, emissions, applicable requirements, and compliance status and plans, to the extent required by state or regional program regulations and guidance. Various other materials will be optional, and maybe appropriate depending on facility objectives.

As shown on the flowchart, a permit application must be timely and complete for the source to be legally able to continue operations. All facilities that are initially subject to Title V are required to have a “complete” permit application on file one year after the effective date of the approved state or regional permit program. Some applications will be called in sooner. Application submittal deadlines for approved state programs range from late 1995 in some states, to March of 1997 in parts of California and a few other jurisdictions. In jurisdictions where state programs have yet been approved (5 states,<sup>4/</sup> some territories, and the Los Angeles air basin) permit applications must be submitted to the U.S. EPA by July 31, 1997.

The nominal first step in permit processing is a completeness determination. Many state and regional programs will deem an application complete for administrative purposes with minimal substantive review. If the permit agency takes no action on an application within 90 days, the application is also “deemed” complete. Additional information can be requested where an application is incomplete, whether or not the application was “deemed” complete. It is likely to be common for more information to be requested from facilities when a permit application is actually reviewed and processed. Permit applications may sit at permitting agencies for long periods without any action, because one third of all initial permits need not be issued for two years after a permit application is due.

When the agency has the information it needs, it will develop a proposed permit. The agency and the source are likely to negotiate permit terms at this stage in the permitting process, but there is no formal requirement that the agency discuss potential permit terms with the facility before releasing a proposed permit for public comment. The permitting agency’s proposed permit must be made available for public and affected state comment prior to formal submission to EPA. EPA may also comment at this stage. If there is sufficient public interest, a hearing may be held. If there are comments, the agency must keep records of who made comments on which issues. However, there is no federal requirement for permitting agencies to respond to comments in writing, or to invite the applicant to respond to public comments. Some local

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<sup>4/</sup> Alaska, Connecticut, Idaho, Maine and Virginia.

program regulations address these issues. All permit applicants should take the initiative to review comments that have been submitted on their proposed permit, so that inaccurate, misleading or irrelevant statements in those comments can be addressed on the record before the end of the comment period.

EPA attaches great significance to these public participation processes. However, past experience in many jurisdictions has been that there is typically little public interest in “routine” permitting decisions in the air area. Since most Title V initial permits will not involve new emissions or new substantive emissions control requirements, public interest in these permits may be limited.

At the end of the public comment period, the permitting agency must submit a final permit to the regional EPA office for review and approval. If the permit does not properly implement the Clean Air Act, EPA can require that the permit be changed. If EPA does nothing for 45 days the permit may be issued. EPA’s resources for review of initial permits will be limited, but permits that implement MACT standards are likely candidates for review despite these limitations. Permits for very large sources, permits that attract public comment, and permits that include compliance schedules are also likely candidates for EPA review.

Title V provides three opportunities for challenges to Title V permits even after they have completed a public notice and comment and EPA review process. For 60 days after the 45 day EPA review period ends, petitions for reconsideration can be submitted to EPA by any person who commented on the proposed permit. If a petition is denied, that EPA action could potentially be challenged in federal court. However, a more likely forum is state court: State Title V programs are required to provide that any person who commented on a proposed Title V permit may also challenge that permit in state court.

Once issued, Title V permits will typically have a nominal 5 year term. If a timely and complete application for renewal is submitted, the facility may operate under its Title V permit beyond the nominal permit term, until a new permit is issued. Extensions of this kind are common for NPDES permits.

### III. Permit Application Tools

Various software “tools” were developed as part of this project, to help facilities determine the applicability of Title V permitting to a facility. The “toolbox” provided with this report contains the following tabs:

- 1) Title V Applicability Flow Chart and Tool Guide
- 2) Title V State Implementation Status and Selected State Summaries
- 3) Shipyard Look-up Table
- 4) Ozone Attainment Status Report
- 5) Plain English Interpretation of the EPA’s Shipyard MACT

- 6) Shipyard Emission Inventory Guide
- 7) Emission Rules of Thumb
- 8) Emission Spreadsheets and Documentation
- 9) Potential to Emit and Maximum Capacity to Emit References
- 10) Inherent Constraints to Production White Paper

The Shipyard Title V Applicability Flowchart and Tool Guide, Figure Two, shows the appropriate “location” for the use of each tool in the process of the determining if a shipyard is subject to Title V permitting. Those tools are described briefly here, and more fully in Section 6 of this manual and in appendices to this report. The tools, and this manual can be downloaded at no cost, from the NSNet ([www.NSNet.com](http://www.NSNet.com)) web site, or obtained on disc, at cost, directly from Austin Environmental, Inc.

These emission quantification tools were first developed when it was generally believed that detailed information on actual and potential emissions would be required in every Title V permit application. Subsequently, EPA and some states issued guidance that substantially reduces emissions information requirements for most permit applications. Any facility that is clearly subject to Title V should determine what emissions information it will actually be required to provide in its permit application, before deciding which of the tools developed for this project are relevant to its application. Facilities that are required to provide information on emissions or potential emissions are likely to find that the emissions estimation tools developed for this project can save a substantial amount of time and expense.

## CHAPTER 2

### AFFECTED FACILITIES

#### I. Facilities Subject to Title V

Under Title V it is the obligation of each facility to determine whether a permit is required. Facilities are not entitled to wait for notification from their permitting agencies that an application is required. Permitting authorities that have resources available to identify potential candidates for Title V permitting are notifying those facilities of this programs. However, some facilities are likely to be missed. The greatest risk to these facilities may come from competitors who comply with Title V, and are unwilling to be placed at a competitive disadvantage for having done so.

Title V applies to facilities that are “major” sources of air pollutants, and to other “designated” sources that are subject to specific federal emissions standards. (40 CFR 70.3.) Sources that are subject to a New Source Performance Standard (NSPS), or to a National Emissions Standard For Hazardous Air Pollutants (NESHAP) are subject to Title V. The Marine Coatings Maximum Achievable Control Technology (MACT) standard recently promulgated by EPA is a NESHAP standard that triggers Title V. Once a facility becomes subject to Title V for any reason, the program applies to the entire facility.

Any facility with the “potential to emit” more than 100 ton per year of any regulated pollutant (including PM<sub>10</sub> but not TSP) is “major.” In ozone non-attainment areas the thresholds are lower for potential emissions of reactive organics and/or NO<sub>x</sub>; these thresholds depend on the non-attainment area designation. In “serious” or “severe” ozone non-attainment areas, the use of solvents in cleaning, or the presence of a single large diesel engine on site, can be enough to make a source “major.”

Finally, a source is “major” if it has the potential to emit more than 10 tons per year of any hazardous air pollutant, or more than 25 tons per year of all hazardous air pollutants combined. (See Clean Air Act Section 112(b), 42 USC § 7412(b).) These are the same thresholds used to determine whether the marine coatings MACT is applicable to a shipyard. Potential emissions from marine coatings are expected to be the principle reason that shipyards become subject to Title V. The tools developed for this project include “rules of thumb” that can be used to get a rough estimate of potential HAP emissions from marine coatings at a specific yard, and spreadsheets that can be used to refine those estimates for yards that are uncertain whether Title V is applicable. See Section 7 of the Title V Toolbox..

In determining potential to emit for applicability purposes, potential fugitive emissions of non-hazardous air pollutants count for some sources, but not for shipyards. Potential fugitive emissions of hazardous air pollutants always count. (See the definition of “major source” in 40 CFR 70.2.) Facilities do not become subject to Title V merely because they are subject to the Section 112(r) accidental release prevention program.

## II. Potential To Emit

The concept of “potential to emit” has played a role in the application of air pollution control programs for many years. The concept is intended to ensure appropriate scrutiny of sources and modifications that could have a big effect on air quality, even if the present operation of the source results in actual emissions that are below thresholds for regulation.

A permit application manual such as this, prepared six years after the Clean Air Act was amended, should be able to provide clear guidance on how to determine potential to emit. But that is not yet possible. EPA’s unreasonably aggressive approach to defining this term for Title V purposes came to an abrupt end with a recent court decision, discussed below, that vacated and remanded EPA’s definition of this key term. As a result, there is currently no binding federal regulatory definition of “potential to emit” for Title V purposes. Therefore, guidance in this area must be qualified, and may become obsolete sometime in 1997 if a new federal regulation is promulgated.

### A Brief History Of "Potential To Emit" For Title V Purposes

EPA defined “potential to emit” in its 1992 Part 70 regulations as follows:

“Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type of amount of material combusted, stored, or processed, shall be treated as part of its design if [but only if] the limitation is enforceable by the Administrator [of the U.S. EPA]. (40 CFR 70.2.)

In other words, EPA didn’t care whether a source used pollution controls, unless the requirement to use such control was directly enforceable by EPA. EPA ignored state-imposed limits on operations, and treated as irrelevant the actual operations at the source and any external factors that would limit source operations.

This expansive definition of “potential to emit” was vigorously resisted by state permitting authorities and the regulated community. The Los Angeles area permitting agency, for example, declined to submit a Title V program application that would require it to issue Title V permits to thousands of small sources, and argued that some exclusion from permitting should be allowed based on actual emissions. In response to these kinds of concerns, EPA issued a “transition policy” in January 1995.<sup>5/</sup> There are three distinct aspects to this policy.

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5/ “Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act” (January 25, 1995.)



First, the transition policy provided information on existing means to limit PTE. These means included NSPS and NESHAP requirements, rules approved as part of a state SIP (e.g., to limit emissions from existing sources and permit conditions (e.g., requiring use of controls) imposed through a state process approved by EPA as part of the state implementation plan.

Second, the transition policy interpreted EPA's rule, by clarifying the role of inherent physical limitations and operational design features in limiting potential to emit. EPA's guidance embraced attention to these limitations when they directly affected individual emissions units (e.g., a single spray booth at paint and body shop), but was unenthusiastic about prospects for sorting out the effects of these limitations in more complex settings. EPA subsequently clarified this aspect of its guidance as applied to grain elevators,<sup>6/</sup> and to emergency generators.<sup>7/</sup> More recently, EPA has recognized that some processes at batch chemical plants may operate for only a portion of each production cycle, limiting PTE. Similar logic applies to shipyards: blasting must proceed painting; painting and hot work must be sequenced, etc.

The "transition policy" also offered sources two new options that could be relied upon to limit PTE until January 1997. (That date has since been extended to July 31, 1998.) <sup>8/</sup> The new options allowed Title V permits to be deferred for sources whose PTE was subject to a state restriction limiting emissions that was "enforceable as a practical matter,"<sup>9/</sup> provided the source certified to EPA that it accepted federal enforcement of that limitation. By January 1997 EPA expected these sources to limit their PTE through conventional means, such as a federally enforceable permit condition. The policy also deferred Title V for sources whose actual emissions were less than half of their potential to emit thresholds, provided the source maintained records to demonstrate these low emissions levels. This was also a temporary

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<sup>6/</sup> EPA recognized that "country grain elevator" operations are seasonal, and that a given elevator could not process more grain than could be grown in its market areas. See "Calculating Potential to Emit (PTE) and Other Guidance For Graining Handling Facilities," from John S. Seitz, Director, OAQPS, to Regional Air Directors (November 1995).

<sup>7/</sup> Sources may calculate PTE for these units based on operation for 500 hours per year.

<sup>8/</sup> Memorandum from John S. Seitz, Director, OAQPS, "Extension of July 25, 1995 Potential to Emit Transition Policy," (August 27, 1996).

<sup>9/</sup> EPA guidance has discussed when a permit requirement is "enforceable as a practical matter." In January 1996, when EPA announced plans for a potential new rule on potential to emit, EPA was clear that it intended to require that acceptable state limits be permanent, legally binding on the source, at least as stringent as any related SIP requirement, and technically accurate and quantifiable. EPA also wants an averaging time no longer than monthly (or annual on a rolling monthly basis), and sufficient monitoring, recordkeeping and reporting to demonstrate compliance with the limit.

reprieve, to be replaced by new SIP rules limiting actual emissions for smaller sources. Recently, EPA extended this transition policy until mid-1998.

Resistance to EPA's concept of its Title V jurisdiction continued during 1995, despite transition policy. Judicial challenges to similar EPA definitions of "potential to emit" in other Clean Air Act programs moved forward, and resulted in court rulings that remanded those definitions because EPA had not adequately justified its insistence on federal enforceability. (National Mining Ass'n v. EPA, 59 F.3d 1351 (D.C. Cir. 1995); Chemical Manufacturers Ass'n et al. v. EPA, No. 89-1514 (D.C. Cir. Sept. 15, 1995). For PSD and NSR purposes, EPA's definition of potential to emit was also vacated. EPA responded to these decisions on January 22, 1996 with an "Interim Policy On Federal Enforceability Of Limitations On Potential To Emit," and with a promise to reconsider the issue in a new rulemaking. The interim policy noted that these definitions had not been "vacated" for Title V purposes, and so were legally still in effect. Nevertheless, EPA modified its transition policy by dropping the requirement for sources subject to state-only limits on potential to emit to certify acceptance of federal enforceability. This change in policy allowed sources to temporarily rely on state-only requirements to limit potential to emit for Title V purposes. Sources choosing this option were still at some risk, however. 10/

On June 28, 1996, the U.S. Court of Appeals for the D.C. Circuit directly addressed the definition of PTE for Title V purposes, by vacating and remanding the definition of "potential to emit" in EPA's Title V regulations. The court's concern was that EPA's definition gave credit to physical and operational limits on emission only if those limits were enforceable by EPA. (Clean Air Implementation Project et al. v. EPA, No. 96-1224 (D.C. Cir. June 28, 1996.)

Vacatur means that the definition of "potential to emit" in 40 CFR 70.2 no longer has any legal effect. This raises two legal questions: (1) What does "potential to emit" mean for federal purposes now, and (2) are state-promulgated definitions of "potential to emit," which were based on EPA's definition, still valid and applicable?

Opinions concerning the meaning of "potential to emit" for federal purposes are likely to differ following this court ruling, at least until EPA promulgates a new rule. The vacatur reduced risks for sources that forego submission of a Title V application based on state permit limits, but risks remain 11/ and will vary from source to source. These risks may also vary significantly across states. To secure approval for their programs, states have been compelled to adopt definitions of "potential to emit" that were based on the EPA language that has now been

10/ EPA's policy was not a revision to legally enforceable regulations, so citizens (including competitors) could still take action if an application required by regulations was not submitted on time.

11/ For example, EPA or a citizen's suit could assert that a particular state limit was not "enforceable as a practical matter" and therefore did not limit PTE for Title V purposes.

vacated. These definitions may still be valid and applicable as a state law matter, despite vacatur of the underlying federal definition. It is unlikely that EPA or citizens could enforce these state definitions,<sup>12/</sup> but state enforcement is a possible risk.

#### Guidance on Potential to Emit. And Remaining Uncertainties

Despite these uncertainties about current enforcement, and about how potential to emit will be defined in EPA's planned new rule, some guidance is possible here. Facilities should first determine whether their potential to emit would be below Title V thresholds if state-only requirements are taken into account. The "quality" of the state limit on emissions, relative to EPA's policies on practical enforceability, should be factored into this determination. <sup>13/</sup>

Sources that may or may not need a Title V permit, depending on state limits, should determine whether to defer submission of a permit application until rules are clarified, or whether to instead submit an application now that could be withdrawn later if it become clear that the application was unnecessary. This decision will depend in part on state timetables for permit issuance and fee collection, and on state policies for deeming applications complete. If an application will be accepted without a fee, and is likely to be deemed complete and then to sit until mid to late 1997, then risks can be cheaply avoided by submitting an application. Conversely, it is important to avoid an unnecessary application where a permit may soon be issued, because it may not be possible to withdraw from the Title V program once a permit has been issued.

In any case, sources that forego a permit application now based on state limits on emissions must continue to track this issue. The "potential to emit" issue has not been resolved by these court decisions--it has only been reopened. EPA may still propose a rule that requires federal enforceability, if it reasonably concludes that such enforcement is necessary to ensure enforceability or to create adequate incentives for compliance. A new rule could also set stringent standards for when a state requirement will be considered to adequately limit potential to emit, which some state limits may not be able to meet.

Finally, it should be recognized that the current "debate" over federal enforceability requirements is only one aspect of the PTE issue. Other unresolved questions exist concerning "inherent" limits on production. The authors believe EPA's limited guidance on inherent

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<sup>12/</sup> See, e.g., *US. v. Recticel Foam Corp.*, 858 F. Supp. 726,742-743 (1993); *In re Hardin County*, No. RCRA-V-W-89-R-29, 1994 WL 157572, at \*1 (EPA Apr. 12, 1994).

<sup>13/</sup> Of course, sources could work with their state or regional permit agencies to improve the "quality" of a state limit applicable to the source. If likely EPA tests for whether a limit is "enforceable as practical matter" are clearly met, it will be less risky now and later for a source to not submit a permit application.

physical limitations and operational designs can be applied to shipyard processes (see Tab 10 of the Toolbox), but some permit writers may disagree. An argument can also be made that “potential to emit” will be limited by external reality for many facilities. For example, the and skills of the labor pool in an area may make 24 hour a day operations impossible. Production may become less efficient as production rates increase, raising costs to unacceptable levels well before theoretical limits on productive capacity are reached. Or demand for a product may be limited, so that a firm would be unable to sell its product if it operated around the clock. It is unclear whether these kinds of issue will be clarified in EPA’s new rulemaking.

Even greater uncertainty exists concerning the effects of pollution prevention measures on “potential to emit.” For example, a source may have voluntarily substituted a non-hazardous cleaning solvent for a hazardous solvent, for pollution prevention or economic reasons. A literal reading of EPA’s vacated definition of “potential to emit” would suggest that the “potential to emit” the hazardous solvent would not be affected by this substitution. But a literal reading of EPA’s language would also suggest a “potential” to emit even where a hazardous solvent had never been used, provided it legally could be used. Acceptable assumptions concerning the intensity of such existing and “potential” uses are also an unresolved issue. For example, a source may use solvents carefully for wipe cleaning, to minimize costs or emissions. If there is no permit limit requiring such care, however, must a profligate overuse be assumed in determining “potential to emit”?

In practice, different state programs will evaluate similar PTE situations very differently. Some jurisdictions will discourage sources with historically low actual emissions from pursuing a Title V permit, with little inquiry into theoretical equipment or facility capacities. Other jurisdictions may be more interested in permit terms than in history when evaluating potential to emit. An agency’s opinions concerning a source’s PTE are not binding on EPA or citizens, and a facility relies on such opinions at its own risk. A source relying on such opinions in a debatable situation should get the agency’s position in writing.

In summary, the vacatur of EPA’s definition of “potential to emit” provides some new opportunities for shipyards to defer and perhaps to avoid Title V permitting. Facilities should determine how existing state requirements to use controls or to limit operations affect their “potential to emit.” If “potential to emit” determined on this state basis is less than Title V “potential to emit” thresholds, a more detailed consideration of the “practical enforceability” of the state requirement is warranted. If “potential to emit” is below thresholds because of a state requirement to use a control device, or because of a limitation on operations that is tracked by the state, then serious consideration should be given to withdrawing or not submitting a Title V application, or to asking the permitting agency to defer any permit decision.

## CHAPTER 3

### EPA RULES AND GUIDANCE ON PERMIT APPLICATIONS

#### I. Program Objectives

The Title V permitting process is likely to be easier to understand and to navigate, and possibly somewhat less frustrating, if the objectives of the Title V program are understood. These objectives have shaped program requirements, and they will influence the discretionary decisions of permit writers on specific permits.

The 1990 Clean Air Act Amendments created new federal air pollution control programs to address acid rain, ozone depleting chemicals, and accidental releases of hazardous air pollutants. The federal approach to limiting routine emissions of hazardous air pollutants was also radically revised and expanded, replacing a risk-based program with a more aggressive technology-based program. Long-standing programs to pursue ambient air quality standards and to reduce emissions from vehicles were also revised.

The Title V operating permit program is, in part, a tool in the service of these and other substantive air pollution control programs. EPA put it this way in 1995:<sup>14/</sup>

“In general, this program was not intended by Congress to be the source of new substantive requirements. Rather, operating permits required by title V are meant to accomplish the largely procedural task of identifying and recording existing substantive requirements applicable to regulated sources and to assure compliance with these existing requirements.”

Even with EPA’s recent streamlining guidance, the burden imposed by Part 70 on permit applicants and state agencies are too great to be justified merely as a means to “identify and record existing substantive requirements.” Many state and regional permit agencies have been frustrated with a program that appears to impose paperwork burdens without the potential for substantial air quality benefits. These agencies may still view Title V as a nuisance to be got through as painlessly as possible. EPA, however, fully expects that the Title V program will provide real environmental benefits, by changing the actual practices of permitted facilities. Quoting EPA again, <sup>15/</sup>

<sup>14/</sup> “EPA White Paper For Streamlined Development Of Part 70 Permit Applications,” from Lydia N. Wegman, Deputy Director, OAQPS, to Regional Air Directors (July 10, 1995), page 1. (Hereafter, “White Paper I“.)

<sup>15/</sup> Preamble to proposed revisions to EPA’s Operating Permits Program, 60 FR 45530, Section I.D. (August 31, 1995).

“Part 70 helps achieve these benefits by giving company officials the opportunity to be fully knowledgeable about their compliance obligations and creates strong incentives for assuring that compliance is maintained. This will in turn result in improved air quality for the public, and States will not have to adopt new regulations to meet air quality standards to make up for noncompliance with existing rules. . . . The vast majority of businesses in this country want to comply with environmental regulations. The part 70 program clarifies their obligations while avoiding possibly costly litigation.”

This politically correct statement about how Title V will “provide opportunity” to businesses by creating “strong incentives for assuring that compliance is maintained” is a statement about the enforceability of existing clean air requirements. Providing “strong incentives”--i. e., increasing enforceability--is a goal that EPA is pursuing with vigor as Title V is implemented.

In practice, many nominal air pollution control requirements have been unenforceable or difficult to enforce in the past, for various reasons. Some quantitative limits on emissions may not have included specific averaging periods or test methods that would define what was actually required. Other limits may not have been associated with specific requirements for monitoring or record-keeping that would allow a permit authority to determine whether a source was in compliance. To ensure enforceability in the future, EPA will attempt to ensure that Title V permits will include adequate requirements for monitoring, record-keeping, and reporting. Some permitting agencies are likely to enthusiastically support this goal; other may believe that the permit terms and enforcement programs that they have had for years are adequate. Regardless of whether new monitoring, record-keeping and reporting requirements are added to permits or not, however, enforcement will be more streamlined under Title V. This is because Title V sources will be required to certify compliance or non-compliance at least twice a year. Any certification of non-compliance will be an invitation to the permitting agency and EPA to take enforcement action, or to a citizen’s group to file a lawsuit. A false certification of compliance is a felony.

The addition of new permit terms for monitoring, record-keeping, and reporting will not only increase enforceability, however. These changes will also increase the effective stringency of many existing air pollution control requirements. His one thing to “comply” with a New Source Performance Standard based on a source test performed shortly after a facility is constructed, for example, and another thing to demonstrate compliance through periodic testing over the life of such a unit. Even greater changes in effective stringency are possible where averaging periods or test methods are specified for the frost time in a Title V permit. 16/

16/ EPA’s separate rulemaking on the use of “any credible evidence” to determine compliance would broaden this issue beyond Title V sources, and would make Title V permits important as tools that could be used to restore some certainty to compliance measurement.

Whether this change in regulatory expectations is described as “assuring compliance” with an existing requirement, or in some other way, is largely irrelevant. What matters is that it is a goal of EPA in implementing Title V to have this effect on sources, and that Title V provides the means to achieve that goal. Facilities subject to Title V must take these enforcement goals and tools into account when planning for Title V permitting and compliance, even if the state or regional permit agency views Title V as “largely procedural.” Facilities that receive Title V permits may need to adjust their operations or to increase their emissions control efforts to prevent findings of non-compliance once a Title V permit is in place.

## II. State Program Authorization

Prior to 1990, the only federally mandated permits for air were preconstruction permits for new and modified sources that were “major” sources of pollutants or that were subject to federal NSPS or NESHAP standards. Many states did not have air permit programs in place to help ensure that facilities subject to specific regulatory requirements were complying with those requirements. In other areas, with more serious air quality problems, state or local operating permits were required even for small sources. Title V mandates development of operating permit programs in states that had no such programs, and requires changes to operating permit programs in states where such programs already existed. A major challenge in implementing Title V has been to mesh these new federal requirements with existing, very different state permitting programs.

Like other federal environmental programs, the Title V program will be implemented principally by the states. EPA has issued regulations for the design of state Title V permit programs, and as of January, 1997 EPA had reviewed and approved such programs for all but a few states. In these states, EPA will also review specific proposed Title V permits, and can require any changes that are necessary to comply with the Clean Air Act. EPA’s Part 71 regulations may be used for Title V permitting in some states. However, it is likely that pending applications for state or regional programs will be approved in these jurisdictions before permits are actually issued, or that states will be delegated authority to administer a Part 71 program. A possible exception is Virginia. <sup>17/</sup> EPA will receive Title V permit applications and issue Title V permits directly only if and for so long as there is no approved state or regional program in these jurisdictions.

The Clean Air Act established some minimum specifications for state Title V programs (42 U.S.C. § 7661a(b)), for permit applications (§ 7661 b), and for permits themselves (§

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<sup>17/</sup> Virginia has unsuccessfully challenged the Clean Air Act’s requirement that states provide access to their courts to any person who comments on a proposed Title V permit. (*Virginia v. Browner* (4th Cir., No. 95-1052) (March 28, 1996).). An appeal to the Supreme Court is being considered. As an interim step, Virginia will again seek delegation of the Title V program, but with permit appeals routed to EPA’s environmental appeals board rather than to state courts.

7661c). <sup>18/</sup> EPA's initial 1992 regulations on state programs (40 CFR Part 70, 57 FR 32250) were an enthusiastic exercise of EPA's new authority over state permitting programs. Subsequent litigation and the vigorous protests of both state agencies and industry led EPA to . proposed to amend many aspects of this rule, a final rule revising Part 70 is expected in May or June, 1997.) EPA has clarified other requirements through guidance, and has delayed implementation of some parts of the Clean Air Act that depend on Title V permits.

In the midst of this legal and political debate, states were required to prepare their Title V programs and to submit them to EPA for approval, under 40 CFR Part 70 as promulgated in 1992. States resisted EPA's demands to widely varying degrees, submitted their programs at different times, and coordinated their programs with existing permit programs in different ways. States have subsequently embraced EPA's more flexible guidance to different degrees. The result is an array of state programs (and permit application deadlines) that differ from each other significantly. With few exceptions, these state programs have received only "interim" approvals from EPA, and will need to be further modified over the next two years. Even programs that have received "final" authorization are likely to be revised to take advantage of the additional flexibility that revisions to 40 CFR Part 70 are likely to provide.

### III. 40 CFR Part 70 Application Requirements And EPA Guidance On Permit Applications

40 CFR 70.5(c) sets out requirements for the contents of permit applications. EPA has required that authorized states programs incorporate these requirements virtually verbatim. In states whose programs were approved prior to or during 1995, permit application forms have also been based on requirements as stated in 40 CFR 70.5(c). However, EPA subsequently issued important guidance on how Title V permit application requirements could be met, in two "White Papers:" "White Paper for Streamlined Development of Part 70 Permit Applications" from Lydia N. Wegman, Deputy Director, OAQPS, to Regional Air Directors (July 10, 1995) (hereafter, "White Paper I," see Appendix A); and "White Paper Number 2 - Guidance For Improving Implementation Of The Operating Permits Program," from Lydia N. Wegman, Deputy Director, OAQPS, to Regional Air Directors (March 5, 1996) (hereafter, "White Paper Number 2," see Appendix B). Actual requirements for an initial Title V permit application may be substantially more streamlined than published regulations and application forms suggest, in jurisdictions where EPA's guidance is being implemented.

Specific information requirements and other permit application issues are discussed below. Permit application instructions and other guidance issued by a facility's permitting agency should also be consulted.

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<sup>18/</sup> EPA's regulations only set minimum requirements for state programs. States may choose to implement permit program that are greater in scope or more stringent than Title V would require. A few states have imposed Title V procedures on facilities that are not subject to Title V in order to maintain a more unified permitting program.



### Facility Information (§ 70.5(c)(1) & (21))

This is straightforward. Permit forms will indicate specific requirements.

### Emissions-Related Information (§ 70.5(c)(3))

40 CFR 70.5(c)(3) nominally requires permit applicants to “describe” all emissions from units at the facility (except exempt units),<sup>19/</sup> to identify specific points of emission as necessary to establish applicable requirements, to report “emission rates in tpy and in such terms as are necessary to establish compliance;” and to provide information on fuels, fuel use, raw materials, production rates, and operating schedules to the extent needed to “determine or regulate emissions.”

The White Papers streamline these requirements in several ways. First, the White Papers clarify that emissions information needs to be provided only when that information is necessary to determine whether a requirement is applicable, or whether a source is in compliance with that requirement. <sup>20/</sup> Second, White Paper Number 2 allows requirement applicability issues to be addressed by stipulation. For example, a source that stipulates to the applicability of Title V and (for example) the Marine Coatings NESHAP may not need to quantify emissions or emissions rates for HAPs, it can instead simply “describe” those emissions. White Paper Number 2 also allows emissions information to be provided by reference to prior readily identifiable and publicly available documents, such as emissions inventories previously submitted to the district.

Title V permit programs will still at least require identification and some brief description of specific “significant” units and activities that emit regulated pollutants. Some qualitative information on actual emissions is likely to be required, unless such information is already on file with the agency. This minimum information is required for significant units even if those units are not subject to a federally enforceable pollution control requirement. In many jurisdiction, however, there may no longer be a requirement to provide quantitative emissions information, or information on an activity’s “potential to emit.” <sup>21/</sup>

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<sup>19/</sup> Emissions units or activities can be “exempted” from Title V as “insignificant” or “trivial.” In most permit programs, “insignificant” units need only be identified in the permit application, on a list or a check-off form. “Trivial units do not need to be mentioned. See Section IV below for more information.

<sup>20/</sup> For example, while EPA’s regulations explicitly require information on “Emissions rate in tpy” for each source that is significant, White Paper I states “The EPA interprets the tpy estimates to not be required at all where they would serve no useful purpose... .”

<sup>21/</sup> Prior to issuance of White Paper I, the investigators for this project developed software tools for estimating actual and potential emissions for marine coatings and other shipyard

(Footnote continued on next page)

40 CFR 70.5(c)(3) also requires identification of air pollution control equipment, compliance monitoring devices or activities, and any limitations on source operations affecting emissions. Providing this information should be straight forward.

40 CFR 70.5(c) (3) (vii) states that applications must include “other information required by any applicable requirement.” This provision typically will not affect shipyard activities; moreover, if specific information is already required for a process, it will typically already be on file at the agency so that it can be incorporated into the application by reference.

#### Pollution Control Requirements (§ 70.5(c)(4))

Identifying the pollution control requirements applicable to shipyard processes and activities is central to the Title V process. All programs will require that at least some requirements be identified; the White Papers address how this can be done in some detail.

40 CFR 70.5(c)(4) calls for a “citation and description” of all “applicable requirements,” and references to applicable test methods. The first issue this raises is what constitutes an “applicable requirement” that must be included in a permit. In practice, this will vary from permit program to program.

As a starting point, the Clean Air Act provides that Title V applies to “each standard, regulation or requirement under this Act” (42 U.S.C. 7661a(b)(5)(A)); it does not apply to additional requirements that may have been imposed by states. Consistent with this limitation, 40 CFR 70.2 includes a definition of “applicable requirement” that reaches SIP requirements, some requirements imposed as a result of new source review, NSPS requirements (e.g., for newer larger steam generators), NESHAP requirements (e.g., for Marine Coatings and asbestos removal), acid rain and ozone depleting chemical requirements, and several other federal requirements that are unlikely to affect shipyards. All of these requirements are federally enforceable, as specified in the Clean Air Act.

In practice, however, EPA has presumed that state and regional requirements that are not federally enforceable will also be addressed in many Title V permit applications, and be incorporated into Title V permits with a notation that they are not federally enforceable. The same presumption is apparent in many state and regional programs, and some states have explicitly “unified” their permitting programs so that all requirements that apply to a Title V source must be included in the Title V permit. Most state and regional programs, however, have

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processes. (Those tools are described in Chapter 7 of this manual, and in the Title V Toolbox). These emissions estimation tools are still valuable for many purposes, but they are likely to provide more detailed information than a shipyard is required to submit as part of its Title V permit application. As a general rule, unnecessary detail should be avoided in a Title V permit application.

faithfully reproduced the 40 CFR 70.2 definition of “applicable requirements” in their state program regulations. In these jurisdictions, there maybe no legally enforceable requirement that state and regional air pollution control requirements be addressed in Title V permit applications, or Title V permits.

Shipyards should discuss with their state and regional permit authorities whether it is in fact expected that state and regional air pollution control requirements will be addressed in Title V permit applications. Where this is expected but not legally required, vigorous discussion may be warranted to narrow the scope of the Title V application and permit if possible. Excluding state and regional requirements from the Title V permit process will simplify the initial permitting process, narrow the scope of initial certifications, and keep state compliance issues and plans out of the public participation and EPA review process that goes with Title V permitting. Narrowing the scope of a Title V permit could prevent the imposition of unnecessary new monitoring, reporting, record-keeping, and certification requirements for state and regional requirements. A permit with less scope would also minimize permitting impediments to facility modifications later. This kind of limitation in scope maybe particularly useful for shipyards, many of which will be subject to only one or two federally enforceable “applicable requirements:” the Marine Coatings and asbestos removal NESHAPs.

White Paper I provides substantial encouragement for sources that may want to limit their Title V permit to federally enforceable requirements, or even only to “environmentally significant” federally enforceable requirements. In the context of new source review, White Paper I states (at page 14):

Section 70.2 defines any term or condition of a NSR permit issued under a Federal or SIP-approved NSR program as being an applicable requirement.<sup>22/</sup> The Agency has concluded, however, that only environmentally significant terms need to be included in part 70 permits. The EPA recognizes that NSR permits contain terms that are obsolete, extraneous, environmentally insignificant, or otherwise not required as part of the SIP or a federally-enforceable NSR program. Such terms, as subsequently explained, need not be incorporated into the part 70 permit to fulfill the purposes of the NSR and title V programs required under the Act.

The subsequent explanation of this issue in White Paper I is several pages long. However, EPA's guidance on excludable terms is somewhat ambiguous at its edges, and decisions are case-by-case, so advice from legal counsel and/or specific discussions with the permitting agency will probably be required in many cases. EPA's discussion recognizes that some of these decisions may require thought, and therefore provides that permit authorities can defer decisions on what to do with NSR terms for as long as five years. To do so, the permit authority need only list unresolved NSR terms, which would then be treated as "State-only" terms until a decision was made to revise, delete, or finally classify the terms as state terms or federally enforceable terms.

Under this EPA guidance, state and regional permitting authorities need not classify minor NSR terms and conditions as federally enforceable in initial Title V permits. As a general rule, shipyards should strive to minimize such classifications.

If a minor NSR requirement is included in the Title V permit as federally enforceable, the issue of enforceability must be addressed. In an important statement concerning minor NSR terms and conditions, White Paper I provides as follows (at page 18): "Where a permitting authority has already converted the NSR [preconstruction review] permit into an existing State operating permit before incorporation into the part 70 permit, the terms of the current permit to operate will presumptively define how NSR permit terms should be incorporated into part 70

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<sup>22/</sup> The authors consider this a disputable assertion, but EPA does not. EPA's position could have overwhelming implications in jurisdictions, such as California and Texas, that placed broad minor NSR programs, with very low applicability thresholds, into their SIP's many years ago. EPA now asserts that all requirements coming out of these programs are federally enforceable "applicable requirements," no matter how small the source and even if the requirement was based entirely on a state air pollution control program. EPA's willingness to leave some minor NSR terms out of Title V permits mitigates the harsh effects of EPA's interpretation somewhat, but this flexibility will be useful only to the extent it is actually used by facilities and permitting agencies. In most jurisdictions, some initiative by the permit applicant is likely to be required to exclude from Title V permits non-federal requirements and minor NSR requirements that are obsolete, extraneous, or environmentally insignificant.

permits." Permit applicants with minor NSR-based operating permits should resist the addition of new terms to those permits if and when minor NSR requirements are incorporated into a Title V permit.

White Paper I also provides helpful guidance on the standard of care that applies to the identification of applicable requirements in a Title V permit application. Prior NSR permit terms and conditions can be presumed to be valid, without inquiry into whether prior NSR reviews were properly conducted. (White Paper I, page 29.) As to other SIP requirements, an applicant, after consultation with the permitting authority, can base a permit application on "the State rules which, to the best of their knowledge, are in the SIP. (White Paper I, page 13.)

White Paper Number 2 also contains some complex optional guidance that allows a facility to work with its permitting authority to rationalize multiple sets of requirements (and related compliance assurance terms) that may apply to an emissions unit. The opportunity to streamline requirements should be seriously considered by any source that is concerned with its ability to certify and demonstrate compliance with multiple requirements applicable to an emissions unit.

Overlapping and sometimes inconsistent requirements are not unusual in the air area, where a single unit (depending on its history) can be subject to an NSPS standard, a NESHAPs or state HAP standard, a RACT rule in the SIP, and permit requirements arising out of the new source review process, e.g., for a prior modification. (These situations are somewhat less common in shipyards in that industry generally, because of the age and size of typical emissions units.) Under White Paper Number 2 all of these requirements (or a subset) can potentially be supplanted by a single requirement with a single set of compliance assurance terms. A permit shield (or a lesser statement in the permit, to similar effect) would apply to the subsumed requirements. The specifications in White Paper Number 2 concerning how requirements may be streamlined, how compliance assurance terms must be selected, and how application certifications must be supported, are complex and detailed. Shipyards confronting this issue should carefully review these details in White Paper Number 2, as well as any agency guidance on this aspect of the permit application process.

The White Papers also contains guidance on the submission of permit applications when a SIP amendment is pending. EPA has made significant progress toward reducing the number of pending SIP amendments in the past two years, so this guidance may apply to relatively few shipyards. In the simplest and the typical case, addressed in White Paper I, a pending SIP amendment will be more stringent than the approved SIP provision it would replace. The pending SIP provision is likely to be an enforceable local requirement already, that should be addressed in the permit application on that basis. More complex situations are addressed in White Paper Number 2. With this guidance, it should be feasible in virtually all cases to base a permit application on the pending SIP provision, even if that provision is less stringent than the unrevised SIP. While a permit cannot be issued based on a less stringent pending SIP, an application can be submitted, and EPA will accelerate the SIP revisions process to address these situations.

Air pollution control requirements that are addressed in a Title V permit application must be cited and “described.” It is good practice to keep citations broad if a rule provides compliance options, so that the source’s future options are not narrowed. “Descriptions” should be little more than rule titles, and should never summarize or paraphrase rule requirements.

Where similar units face the same requirements, they may be grouped for permit application purposes, so that requirements maybe described once in summary fashion.

White Paper I and White Paper II also clarify that the permit applications may reference information that is at the permit agency and available to the public. Therefore, applicable requirements can be referenced rather than described in detail both in the permit application and permit.

#### Other Applicability-Related and Enforcement-Related Information (\$ 70.5(c)(5))

Few permit programs have defined other specific information that must be provided. This provision of the regulations enables the source to provide any information they think is relevant, and the agency to require additional source-specific information to be provided on a case-by-case basis.

#### Proposed Exemptions (\$ 70.5(c)(6))

Most programs will supply a “form” for listing and justifying exemptions the source believes are applicable. A difficulty that arises in completing such forms is distinguishing between requirements that are not applicable, requirements that would be applicable but for an “exclusion” that applies to a source or unit, and requirements from which a unit is “exempt.” As a general rule, if the “basic facts” about a source or unit (e.g., its type and size) would suggest that a requirement might be applicable, and the requirement is not applicable for reasons that are not physically obvious (e.g., date of installation, intensity of use, or applicability of another more specific rule), then an “exemption” should be claimed and explained in the permit application.

Care should be taken, before submitting a Title V permit application, to confirm that exemptions and exclusions are still applicable and that requirements for such exemptions and exclusions are still being met. The use of a unit may have increased until an exemption is no longer applicable, without that change in circumstances being flagged and addressed. Less frequently, a facility may fail to note a rule change that eliminates an exemption or exclusion.

#### Information On Alternative Operating Scenarios (\$ 70.5(C)(7))

A facility can request and receive a Title V permit that addresses more than one scenario for operating the facility. When a permit for an alternative operating scenario is requested by a facility, terms applicable to that alternative scenario must be included in the permit. (The source may not dictate those terms, of course.)

Alternative operating scenarios can provide necessary flexibility to a shipyard that would otherwise be unable to vary some aspect of its operations because of air pollution control requirements. In the absence of a pre-approved alternative scenario, a permit modification might

be necessary before a shipyard could adjust its operations. <sup>23/</sup> At most shipyards, however, operations are not constrained by current air pollution control requirements. Low-emission spray equipment and compliant coatings may be required, for example, but the quantity of coatings that can be used is rarely limited.

There are exceptions: Some shipyards are subject to daily or monthly limits on total VOC emissions that must be carefully tracked, and newer spray booths or IC engines may be subject to throughput or other operating limits that were accepted to avoid federal emissions offset or other requirements. When operations are constrained in this way, an alternative operating scenario may add flexibility. But, that scenario would likely come at the price of accepting the federal requirement that was avoided through imposition of the operating restriction in the first place. <sup>24/</sup>

It should also be noted that EPA's proposed revisions to 40 CFR Part 70 will make it much less difficult to amend Title V permits. In most cases, revision to the Title V permit should not be much more difficult or time consuming than the NSR process to which the source modification would have been subject prior to issuance of the Title V permit.

Shipyards seeking inclusion of an alternative operating scenario in a Title V permit must provide information to support that scenario in the permit application.

#### Compliance Plan (§ 70.5(c)(8))

For requirements that a facility is meeting, a "compliance plan" consists of a statement that compliance will continue. For future applicable requirements, a "compliance plan" consists of a statement that the source will comply when and as required. Many programs have incorporated these required statements into a single form that also includes the required certification (discussed below) that the application is true, accurate and complete.

The compliance plan becomes a substantive part of the permit application when a facility is out of compliance with a current requirement that must be addressed in the permit application. In these circumstances, the compliance plan must describe how and when compliance will be achieved. If at all possible, this situation should be avoided by coming into compliance with

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<sup>23/</sup> The need for permit modifications prior to facility modifications will be more of a concern under Title V than in the past, because Title V will erode or limit state "variance" programs and increase enforcement risks and penalties if operations are modified while a permit application is pending.

<sup>24/</sup> Where an operating limit was accepted to avoid BACT or offset requirements more than a year earlier, it may sometimes be possible to include an alternative operating scenario in the permit without providing offsets or additional controls. Specific cases should be discussed with counsel, and the permitting agency.

requirements before an application must be submitted, or by establishing that the requirement at issue is not a requirement that must be addressed in the Title V application and permit. Any facility that must confess non-compliance with a federally enforceable applicable requirement in a Title V permit application may be confronted with significant enforcement and citizen suit risks.

#### Compliance Certification Information (§ 70.5(C)(9))

Title V permits will include a schedule for compliance certifications. Therefore, permit applications must provide the permitting agency information on any such certification requirement that already apply to the facility. The Marine Coating NESHAP includes a compliance certification requirement that should be disclosed. No other such requirements were identified as part of this project for common shipyard processes and “federal” applicable requirements. However, each facility should review its specific permits and the regulations in its jurisdiction to identify any compliance certification requirements that may exist.

#### Supplementing The permit Application

40 CFR 70.5(b) requires permit applicants to promptly supplement or correct permit applications if they become aware of a need to do so. Supplemental or corrected information may be needed where an error in the original application is discovered, when a new requirement becomes applicable, or if the facility is modified while the application is pending.

40 CFR 70.5(a)(2) provides that an applicant must provide any additional information a permitting agency needs to process a permit application, even if the application has been deemed complete. Under Title V, initial completeness reviews for many sources are likely to be limited to verifying the presence of some information in each required category, so that applications may be deemed complete and application shields put in place. Requests for additional information are likely to be common once a permit application is actually under review. Unless this information is provided promptly, the application shield can be lost.

#### Certification That The Application Is True, Accurate, and Complete

40 CFR 70.5(d) requires that each Title V application be accompanied by a certification by a responsible official that “based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.”

A separate NSRP project, Task No. NI-92-2, Subtask 7, "Title V Permit Certification Requirement" (June 1995), has addressed this certification requirement in detail. The reader is referred to that report.

It should be noted that EPA’s proposed revisions to 40 CFR Part 70 include proposed changes to this certification language, to read as follows:



I certify under penalty of law that I above have personally examined, and am familiar with, the statements and information submitted in this document and all of its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true accurate and complete.”

This new certification language may be in place soon. Substitution of this certification language could have implications for the recommendations contained in the “Title V Permit Certification Requirement” report noted above.

Title V permit applicants are also required to supplement and correct pending permit applications if it is determined that required information was omitted or that incorrect information was provided, or if new requirements become applicable to the source. 40 CFR 70.5(b).

#### IV. Insignificant and Trivial Emissions Activities and Levels

##### Introduction

As noted above, under 40 CFR 70.5(c)(3) there is no requirement to provide detailed information on “insignificant” emissions units in Title V permit applications. A list or rule (or both) identifying or defining “insignificant” units is a part of every approved state or local Title V program. 25/ Some but not all programs also identify a subset of “insignificant” units or activities as “trivial.” The identification and treatment of “insignificant” and “trivial” activities for Title V application purposes are areas that have been substantially affected by the EPA guidance in White Paper I. However, this guidance is not fully reflected in many state programs, which were drafted and approved when EPA staff were implementing different policies.

No information need be provided in a Title V permit concerning “trivial” units or activities. The permit applicant need not even identify the kinds of trivial units in use at the facility. Insignificant units or activities that are not trivial must at least be listed in the Title V permit application.

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25/ It should be noted that for may programs that have only “interim authorization,” EPA has stated that the interim program’s identification of “insignificant” units or activities will need to be revised. Some of these lists may be shortened or refined to secure final program approval, and many will need to be further justified by permit agencies.

## Trivial Units

EPA defines a “trivial” unit as an insignificant unit with “extremely small emissions,” that has also been specifically identified by the permit authority as “trivial.” EPA listed some “typically trivial” units or activities in an Appendix to White Paper I. (White Paper I is Appendix A to this manual.). This EPA list includes many mobile sources, comfort air conditioning, hand-held tools, and other facility support activities. For these listed units and activities, a state or regional determination of triviality can be made without any revision to the state program or any specific EPA approval. The same streamlined procedure can be used to identify other units or activities as “trivial” at specific facilities on a case-by-case basis, and for short term activities that do not frequently recur. Outside of these categories, a local list of “trivial” activities can be further expanded with EPA approval.

Shipyards may need to work with their state or local program authorities to take full advantage of this EPA guidance. Specifically, shipyards should seek agency agreement that activities identified as “typically trivial” in the White Paper appendix are identified as “trivial” for state program purposes. “Trivial activity” treatment should also be sought for short term activities that do not frequently recur. Individual shipyards could also propose additional appropriate units or activities as candidates for site-specific classification as “trivial” on a case-by-case basis. Title V permit applicants should keep in mind that many existing permit application forms were prepared before EPA issued its White Paper guidance, and may therefore state that some information is required even for “trivial” activities and units. Fully implementing EPA’s White Paper guidance may require agreement with the agency that some parts of these forms need not be addressed.

## “Insignificant” Units

State and regional Title V programs vary substantially in their classification of units and activities as “insignificant.” A comparison of trivial and insignificant unit classifications in several jurisdictions with shipyards is provided in Appendix C to this manual.

Insignificant activity lists cannot be expanded without EPA approval of program revisions, but opportunities for expansion exist in many jurisdictions. Units and activities identified as “typically trivial” in White Paper I that are not considered to be “trivial” under a particular State or regional Title V program, and units designated as trivial or insignificant in other jurisdictions, are obvious candidates for classification as “insignificant.”

## Short-Term Activities

White Paper I provides that short-term activities that are not subject to an “applicable requirement” can be classified as “insignificant” or “trivial”, and so need not be included in a permit application. Short term activities that the permit authority determines are “trivial” can be excluded from the permit application process without EPA concurrence or a program change. As

noted above, however, non-trivial short-term activities can be reclassified as “insignificant” only through an explicit program provision, which must be approved by EPA.

#### Addressing Insignificant Activities in Permit Applications

The permit application information that EPA requires for non-trivial “insignificant” activities is set out below. State programs may require additional information.

At least a “listing” is required for “insignificant” activities that are designated as such because they fall below a certain size or production rate. Where a listing is all that is required, the listing need only identify the kinds of insignificant activities at the facility. Specific emissions units need not be counted, separately identified, or described. The list can be created by the facility, or the information can be provided on a check-off form developed by the permit agency.

More information must be provided about an “insignificant” unit or activity where necessary to determine what “applicable requirements” apply, or where necessary to determine whether the unit or activity is in compliance with an “applicable requirement.” At most shipyards there will be no need to estimate the potential to emit of insignificant units; this is required only where these potential emissions may determine whether the shipyard as a whole is subject to Title V.

Unit specific identifying and other information will typically be required where a permit shield is provided for an insignificant unit.

#### V. Program Change And Permit Applications

The Title V program, six years after passage of the Clean Air Act, is still in flux. The Act anticipated some difficulty in getting this new program launched, when it provided for interim authorization and subsequent revisions to state and local programs. All but a few of the programs so far approved by EPA will need to be revised to address “deficiencies” EPA identified in granting interim approval.

Other recent developments and continuing uncertainties have also disrupted the Title V program. States are still in the process of digesting and implementing significant EPA guidance, some of which was issued as recently as March of 1996. A federal court has just vacated EPA’s definition of “potential to emit,” and in so doing has cast doubt on a central assumption underlying much of EPA implementation of the Title V program (i.e., the assumption that state programs aren’t good enough to effectively limit emissions). Decisions EPA has yet to make in this area will determine whether many sources actually need Title V permits or not. Litigation challenging EPA’s 1992 permit program regulations is also still pending. Decisions in that case could directly affect parts of EPA’s current regulations, or indirectly affect EPA policies.

Significant revisions to 40 CFR Part 70 are pending, as are EPA’s rules on enhanced monitoring or “compliance assurance monitoring.” Revisions to Part 70 will trigger more litigation, and will also trigger revisions to state and local programs, to permit applications, and

to permits. EPA's long-delayed monitoring rule will help to determine what additional monitoring, record-keeping, and reporting requirements will be added to Title V permits.

EPA is also still working with the states to determine how state authorization to administer MACT standards will work, the resolution of this issue will affect Title V permits. Finally, there is some potential for revisions to Title V in 1997, when legislation amending the Clean Air Act will be considered by Congress. It is also likely that EPA will be petitioned to amend the Marine Coatings MACT, before the November 15, 1997 compliance date established in that rule. If this rule is revised, all shipyard Title V permits will be affected.

It is not yet clear whether multiple rounds of state program revisions will be need to respond to interim program deficiencies, Part 70 revisions, a monitoring rule, a potential to emit rule, litigation outcomes, potential MACT revisions, and new legislation. It is also unclear what subset of these developments may provide a basis for reopening of Title V permits before expiration of a five year term.

Title V permit applications must be prepared in the face of this uncertainty. But many Title V permits will not actually be issued until after some of these uncertainties have been resolved. Under these circumstances, it will make sense for many shipyards to be strategic about their investments in an initial Title V permit application, and to submit applications intended to defer issues and to maximize flexibility. Some up front work maybe needed to do this right, both to determine the minimum amount of information that must actually be submitted, and to preserve flexibility.

Applicants should invest in understanding (and perhaps in influencing) which units and activities can be treated as trivial or insignificant. Keeping activities out of the initial permit application will save application costs and defer issues concerning applicable requirements and compliance assurance terms for those units. Applicants should also identify all minor NSR terms that are candidates for omission from the permit or for permanent or interim treatment as state only requirements. Ideally, this work should be done before an application is prepared, in consultation with the permitting agency. All applicants should also do what is necessary to come into compliance with acknowledged "applicable requirements" for "significant units" before a Title V permit is submitted, to avoid the need to certify non-compliance, the expense of a compliance plan, and the risk of enforcement.

Other expenditures on the application process will be worthwhile or necessary for some facilities but not for others. Facilities that might not be subject to Title V, based on state requirements affecting "potential to emit," may find it worthwhile to consult counsel and/or the permitting agency to determine whether a permit application should be submitted at all. It is also the applicants burden to provide optional information when pursuing an alternative operating scenario, a streamlined applicable requirement, arrangements for trading under an emissions cap, a permit shield, or an "advanced NSR" feature in a Title V permit. Whether spending on work in these areas can be deferred or not will depend in part on how quickly a permit application will be processed for a particular facility.

In other areas, economizing on application efforts is likely to make sense for most facilities. If possible, emissions information should be provided by reference to materials already submitted to or compiled by the agency, provided those materials do not substantially overstate emissions of non-attainment precursors or hazardous air pollutants. Estimates of potential to emit should be avoided where possible, principally to lower a facility's profile with the public. Applicable requirements should be identified by the simplest accurate reference, in broad terms, both to preserve flexibility and to reduce application costs. In most jurisdictions, it will also make sense to defer any discussion of potential new compliance assurance terms until EPA completes its "compliance assurance monitoring" rulemaking.

## CHAPTER 4

### STATE PROGRAMS

As noted above, state and regional programs vary. Some features of existing Title V programs in jurisdictions that have shipyards are summarized in this Chapter.

- Attainment status and applicability thresholds. Ozone non-attainment areas are noted. Attainment area thresholds were discussed above.
- Ž Interim exclusions. Some programs will defer permitting for some sources. Special provisions of this kind are noted.
- Ž Provisions for “synthetic minors.” Some programs already have mechanisms in place to “federalize” permit limits for sources that wish to avoid Title V. These are noted. However, as discussed above, it is unclear whether such federalization will actually be necessary in the future.
- Ž Scope expansions. Some programs coordinate existing permit programs with Title V by applying some Title V requirements to non-major sources. These situations are noted.
- Ž Definition of “significant modification.” Most programs track 40 CFR Part 70 provisions concerning the kinds of facility modifications that are defined as “significant” and that therefore require the most intensive review prior to approval. (“Tracks Part 70.”) Some programs are “more stringent” and impose some or all of these requirements on lesser modifications as well. Most programs also treat minor NSR modifications as “Title I modifications” (and therefore as “significant modifications” for permit amendment purposes). This is consistent with EPA policies prior to 1995. The few programs that do not require “significant modification” procedures for all minor NSR modifications are noted. (Pending revisions to Part 70 will provide that most minor NSR modifications need not be treated as “Title I modifications.”)
- Ž Status of EPA White Paper Guidance. This narrative section discusses the program’s implementation of EPA’s guidance.
- Ž Availability of permit shield. If the program does not allow permit shields at all, this is noted.
- Ž Other comments.

State and regional program approaches to identifying “trivial” and “insignificant” activities are addressed in Appendix E.

#### I. Alabama (Jefferson County)

Ozone non-attainment areas: Jefferson County is a “marginal” ozone non-attainment area.

Interim exclusions: None, except sources over which an Indian tribe has jurisdiction.

Modifications: Jefferson County's program relies on net emissions increases to determine whether most modifications to a source are significant. Minor NSR modifications are defined as significant in program regulations. In practice the program may be implemented differently.

White Paper Guidance: EPA's authorization of this program ratifies a two-step process, based on the White Paper, for acceptance of "administratively complete" applications where permitting review will be deferred for a year or more. The application must include standard certifications, despite regulations that suggest otherwise.

## II. California (San Diego area)

Ozone non-attainment areas: San Diego is a "serious" ozone non-attainment area.

Interim exclusions: Non-major sources are deferred, as in most jurisdictions.

Provisions for limiting PTE (synthetic minor sources): No synthetic minor rule has been promulgated, but the District will process applications for modifications to existing permit to impose limits on emissions for specific units. A synthetic minor rule is under consideration.

Expanded applications of Title V procedures: None.

Modifications: On an interim basis, San Diego's program does not require "significant modification" procedures for changes in monitoring requirements that have been approved as part of a SIP revision process. San Diego treats all minor NSR modifications as minor modifications for Title V purposes.

White Paper Guidance: San Diego's permit application instructions and forms \_\_\_\_\_ partially reflect the streamlining allowed by EPA's White papers. Some information requested on these forms is not actually required by the local agency.

Permit shield: A permit shield is available.

Other comments: San Diego's regulations provide that minor NSR requirements are not federally enforceable applicable requirements. EPA disputes this, because San Diego's SIP approved NSR rules include minor NSR. During the interim authorization period, case by case determinations will be made concerning the classification of such requirements, or classification decisions will be deferred.

## III. California (San Francisco area)

Ozone non-attainment areas: The Bay Area is in attainment for ozone.

Interim exclusions: As in most jurisdictions, permitting for most non-major sources that may be subject to Title V (e.g., to small sources that are subject to an NSPS or an older NESHAP standard) has been deferred in the BAAQMD. Permitting has also been deferred for major sources whose actual emission are below 50 TPY for any pollutant, 7 TPY for any HAP, and 15

TPY for any combination of HAPs. These HAP thresholds are more aggressive than those EPA has accepted for deferral purposes in its interim policy on potential to emit.

Provisions for limiting PTE (synthetic minor sources): Provision is made for synthetic minor permitting. New limitations imposed through this process become federally enforceable.

Expanded applications of Title V procedures: The program requires permit applications to address state-only requirements in the same manner as federally enforceable applicable requirements.

Modifications: This program tracks Part 70 language, but this language applies even to state-only requirements because these are defined as “applicable requirements.” Therefore, some modifications that solely implicate state requirements may now require EPA review before they can be implemented. “Minor NSR” modifications are “significant” Title V permit modifications in the Bay Area.

White Paper Guidance: The BAAQMD participated in the development of the EPA White Papers, and has implemented most of EPA’s guidance in written guidance of its own. In some cases, this guidance superseded permit application instructions. The BAAQMD has not taken advantage of EPA’s invitation to designate additional activities as “trivial;” if a unit or activity at a Title V source is not already exempt from permitting in the BAAQMD, it will typically be a “significant” unit for Title V purposes.

Permit shield: A permit shield is available.

Other comments: “Applicable requirements” is defined to include state-only requirements in this program, but only some “applicable requirements” are federally enforceable. Nevertheless, units subject only to a state-only “applicable requirement” cannot be treated as insignificant, so these units and state requirements must be included as significant both in the permit application and permit. This will make facility modifications more difficult.

The Bay Area is actively discouraging permit applications from sources with a history of actual emissions below PTE thresholds, even if those actual emissions exceed the actual emissions thresholds discussed above.

#### IV. Connecticut

Ozone non-attainment areas: The relevant portions of Connecticut are “serious” ozone non-attainment areas.

Interim exclusions: Unlike most jurisdictions, Connecticut’s regulations do not defer permit applications for minor Title V sources.

Provisions for limiting PTE (synthetic minor sources): Provision is made for synthetic minor permitting. The regulations do not require that new limitations on PTE be federally enforceable.



Expanded applications of Title V procedures: Operational limits and work practice standards must be addressed in applications even if these are state-only requirements. State regulations do not explicitly require that other state only requirements be addressed in applications, but all such requirements must be include in the permit. The regulations apply some but not all of Title V's compliance assurance requirements to state only requirements.

Modifications: Connecticut's program tracks 40 CFR Part 70.

White Paper Guidance: Recent guidance provides that emissions information in permit applications may be omitted for an expanded list of insignificant activities.

Permit shield: A permit shield is available.

## V. Florida

Ozone non-attainment areas: Some areas near Tampa are "marginal" non attainment areas for ozone. The Miami area is a "moderate" ozone non-attainment area. The rest of the state is in attainment, or unclassified.

Interim exclusions: Florida has no application deferral for non-major sources. However, Florida exempts some categories of potentially major sources from this program, including steam generators of up to 50 million BTU/hr; and emergency generators, heating units, and general purpose diesel engines operating up to 400 hours per year. These exemptions must be eliminated as a condition for final authorization.

Provisions for limiting PTE (synthetic minor sources): There are no specific provisions to create new federally enforceable limits; instead, Florida's regulations provide that state-only requirements can limit PTE for Title V purposes.

Expanded applications of Title V procedures: Part 70 compliance assurance requirements and permit modification procedures will apply to state-only "applicable requirements."

Modifications: Florida does not use this terminology, but does identify certain changes that can be made without (prior) permit revisions. These include changes approved after NSR review, switches between approved alternative operating scenarios, trading under a cap, and "operating changes" that do not increase actual emissions. These changes will require minimal prior notice to the state. No prior approval or notice is required for changes that would not trigger NSR and that do not change an "applicable requirement" or a requirement accepted in lieu of an applicable requirement. Since "applicable requirements" in Florida is broadly defined, this streamlined permit modification procedure has limited applicability. Most modifications in Florida will therefore require the use of "significant" modification procedures.

White Paper Guidance: Florida has its own approach to limiting the emissions information required in permit applications, setting thresholds for actual emissions that must be exceed before emissions need to be reported.

Permit shield: A permit shield is available.

Other comments: Florida's regulations allow additional activities not listed as "insignificant" in regulations to be identified as "insignificant" on a case by case basis. As a condition for full approval, EPA will require a 5 tpy cap on this provision for non-HAP pollutants activities, and a cap at the lesser of 1,000 pound per year or the (not yet promulgated) Section 112(g) de minimis levels for HAPs.

These rules are structured to include state-only requirements, and local requirements if incorporated into an operating agreement with the state, as "applicable requirements." Federal enforceability is not expanded to these requirements, but the scope of the application and permit must be expanded to include these requirements and the units they apply to. Modifications that implicate state-only applicable requirements may also be "significant" rather than "minor" modifications.

## VI. Georgia

Ozone non-attainment areas: Only the Atlanta area is non-attainment for ozone.

Interim exclusions: Georgia's program regulations are intended to require Title V permits if federal law requires such permits. (Rules, §391 -3-1 -.03( 10)(b)2.) This sensible reference-based approach does not mesh well with EPA's policy allowing states to defer Title V permitting for non-major sources. Georgia's permit application guidance advises major sources and non-major sources subject to a MACT rule to seek a permit. It appears that non-major NSPS sources have been deferred, but there is no regulatory basis for this distinction.

Provisions for limiting PTE (synthetic minor sources): Provisions exist for establishing federally enforceable synthetic minor limits. Title V sources may also use these procedures to limit HAP PTE in a Title V permit to avoid application of a MACT standard.

Expanded applications of Title V procedures: Georgia's regulations reference 40 CFR Part 70 requirements for application contents, and so should only require information on federally enforceable "applicable requirements." Georgia's permit application guidance, however, also calls for information on state standards. Presumably, minor NSR requirements would also need to be addressed.

Modifications: Georgia's program generally tracks 40 CFR Part 70, but imposes a further restriction on the definition of "minor modifications." A change at the facility cannot be minor unless emissions increases are less than 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, are less than 20 percent of the increase defined in NSR rules as a major modification, and are less than 5 tons per year.

White Paper Guidance: Georgia's permit application materials and instructions address EPA's guidance, and incorporate most of the streamlining opportunities that guidance allows.

Permit shield: A permit shield is available.

Other comments: Activities that are “insignificant” or “trivial” are identified in permit forms rather than in regulations. Georgia has taken full advantage of EPA guidance on when emissions units may be treated as “insignificant” based on actual emissions.

## VII. Louisiana

Ozone non-attainment areas: The New Orleans area is non-attainment/transitional for ozone. Title V major source thresholds are the same as for attainment areas.

Interim exclusions: Louisiana has not deferred Title V permitting for non-major sources.

Provisions for limiting PTE (synthetic minor sources): Louisiana’s regulations appear to provide for the imposition of new PTE limits to avoid Title V permitting; there is no specification that these limits will be federally enforceable.

Expanded applications of Title V procedures: Louisiana requires attention to both federal and state-only requirements in permit applications. Moreover, emissions from insignificant units must be quantified in the Part 70 permit application. On the other hand, these regulations do not specifically require that state-only requirements be included in Title V permits. The regulations also explicitly exclude modifications that implicate only state-only requirements from Title V procedures.

Modifications: Louisiana’s program differs from Part 70 in several respects. On an interim basis, Louisiana will allow some changes that “should” be minor or significant to be handled as administrative changes if emissions increases are small enough. But the state makes no provision for implementing “minor” modifications until a permit modification is approved.

White Paper Guidance: Louisiana issues a “Louisiana DEQ Air Permit Procedures Manual” in 1995 to assist applicants in preparing Title V and other air permit applications. The manual compiles written and previously unwritten state policies of the date of the *manual*. This manual does not reflect more recent EPA white paper guidance. Louisiana’s policies may evolve as permit applications are processed.

Permit shield: A permit shield is available.

Other comments: Louisiana has limited its SIP NSR programs to sources required to undergo NSR under federal law. This is probably sufficient to keep state-only minor NSR requirements from being federally enforceable.

Louisiana’s actual implementation of Title V has been more flexible than its program regulations would suggest. As a result, some sources may be at risk for citizen’s suits.

## VIII. Maine

Ozone non-attainment areas: Sagadahoc County (including Bath) is a moderate non-attainment area for ozone.

Interim exclusions: Non-major sources are deferred, as in most states. Maine has also proposed to permit only 74% of initial Title V sources in the first three years of its program; facilities subject to the jurisdiction of an Indian tribe are deferred.

Expanded applications of Title V procedures: Maine requires permit applications for Part 70 facilities to address state only requirements in essentially the same manner as federally enforceable “applicable requirements,” both in the permit application and in the permit.

Modifications: Maine’s interim program will treat all modifications that cause emissions increases of less than 4 tpy of any pollutant and less than 8 tpy of all pollutants combined to be treated as “minor;” under 40 CFR Part 70 some of these changes would be “significant.” On the other hand, Maine’s program makes no provision for §502(b)(1)(O) changes; some changes that could qualify for such treatment may instead be classified as significant. Maine treats existing SIP minor NSR terms as federally enforceable applicable requirements, but does not require that all future minor NSR changes be processed as “significant” permit modifications.

White Paper Guidance: Maine’s program is not yet approved. While the White Paper guidance came too late to affect Maine’s permit program submission significantly, it may still affect the implementation of this program.

Permit shield: A permit shield is available.

Other comments: Maine’s regulations require review of best practicable controls for older units as part of the Title V process, and give the state the authority to impose additional control requirements in some circumstances.

## IX. Mississippi

Ozone non-attainment areas: Mississippi is unclassifiable/attainment for ozone.

Interim exclusions: None. Non-major sources are not deferred, but permits for non-major sources need only include applicable requirements for the units which caused the facility to be subject to Title V.

Provisions for limiting PTE (synthetic minor sources): Synthetic minor sources can be created.

Expanded applications of Title V procedures: Sufficient information to identify applicable state only requirements must be included in permit applications; presumable these requirements will be included in Title V permits. Information on fugitive emissions must be provided for all sources in permit applications, not just for the enumerated source categories for which EPA requires such treatment. However, fugitives can be aggregated and reported on a process basis unless additional detail is needed to identify applicable requirements.

Modifications: Mississippi tracks Part 70 provisions concerning the classification of modifications and related procedures. In approving the program, EPA agreed that minor NSR changes could be processed as minor modifications for Title V purposes.

White Paper Guidance: Mississippi's program predates the White Paper guidance; application requirements are demanding. Some adjustments to these requirements may be possible as permits applications are processed.

Permit shield: A permit shield is available.

Other comments: Mississippi's Title V program is one of the few state programs that was submitted on a timely basis and received full EPA approval. As the discussion above indicates, the program is more comprehensive and more stringent than most programs.

#### X. Oregon (Portland area)

Ozone non-attainment areas: The Portland area is unclassifiable/attainment for ozone.

Interim exclusions: Oregon has exempted non-major sources from Title V permitting, and has deferred permitting for sources with actual emission below 50% of Title V major source thresholds. Temporary sources may also avoid Title V permitting under some circumstances.

Provisions for limiting PTE (synthetic minor sources): Synthetic minors can be created. Moreover, permitted Title V sources that become synthetic minors can apply for revocation of their Title V permits. This is contrary to EPA's "once in, always in" policy for Title, so the provision may need to be removed as a condition for final program authorization.

Expanded applications of Title V procedures: State-only requirements must be included in these permits, and are subject to all requirements other than federal enforceability. Information on fugitive emissions must be provided for all sources in permit applications, not just for the enumerated source categories for which EPA requires such treatment.

Modifications: The Oregon program tracks Part 70.

Permit shield: A permit shield is available.

#### XI. Washington (Puget Sound area)

Ozone non-attainment areas: Puget Sound is a marginal non-attainment area for ozone.

Interim exclusions and state program expansions: Washington has deferred permitting for non-major sources that would otherwise require a Title V permit under federal regulations. However, in addition to federal applicability rules, Washington applies its Title V program to any source in a non-attainment area that causes or contributes to an exceedance of an ambient air quality standards, or to a "significant ambient level" or a toxic air contaminants. These determinations are case-by-case, and these sources need not be "major." Typically, these sources will already have state permits.

Provisions for limiting PTE (synthetic minor sources): Synthetic minors can be created, using federally enforceable permit limits.

Expanded applications of Title V procedures: Washington defines “applicable requirements” to include all state and local regulations promulgated under the state clean air act, and requirements previously established case-by-case in “orders.” These state and local requirements can be designated as not being federally enforceable, and if so designated are not subject to EPA review during permit modifications. Nevertheless, the expansion of this term significantly affects the contents of permit applications and permits; these state-only requirements will in theory now require the same kinds of compliance assurance terms as federally enforceable standards. Washington also requires consideration of fugitive emissions from all categories of sources in determining whether a source is a “major source” for Title V purposes.

Modifications: Washington’s program tracks Part 70.

Permit shield: Permit shields for underlying requirements addressed in permits are mandatory when conditions for a shield are met. Inapplicable requirements will be identified in the permit, and shielded, only on request.

## XII. Wisconsin

Ozone non-attainment areas: The Milwaukee-Racine area is a severe ozone non-attainment area. The entire coastal area to the north is a moderate non-attainment area. Green Bay/Brown County, however, is in attainment for ozone.

Interim exclusions: Non-major sources are deferred using an exclusion.

Provisions for limiting PTE (synthetic minor sources): Synthetic minor status is available, based on federally enforceable permit limits.

Expanded applications of Title V procedures: Wisconsin created its operating permit program in response to Title V, and will apply many of the same permit application, permit, compliance assurance and permit modification requirements to non-Title V sources. <sup>26</sup> Wisconsin defines “applicable requirements” to include state-only requirements; these state requirements must be included in Title V applications and permits and they can result in classification of a modifications as “significant” rather than as “minor.”

Modifications: Wisconsin’s regulations generally track Part 70, but have a longer notice period for minor modifications prior to implementation, and do not allow “off permit” changes.

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<sup>26/</sup> Existing non-Part 70 sources do not need to include citations to applicable requirements, a compliance plan, a compliance certification or an explanation of exemptions in their permit applications. EPA need not review and approve permit modifications for non-Part 70 permits.

Wisconsin's procedures will also be more stringent in practice because state-only requirements are "applicable requirements."

White Paper Guidance: Wisconsin's only permit application guidance was published in 1993, before the White Papers were issued. Further guidance is under consideration.

Permit shield: A permit shield is to be provided in all permits, under appropriate conditions.

Other comments: Wisconsin accepts that minor NSR requirements are federally enforceable.

## CHAPTER 6

### IDENTIFYING “APPLICABLE REQUIREMENTS”

#### I. Emissions Units Affected, And Types Of Requirements

As used in 40 CFR Part 70 and 71 and in this permit manual, the term “applicable requirements” refers only to requirements that are federally enforceable. A case can be made that only such “applicable requirements” need to be included in Title V permits, but most jurisdictions also intend to incorporate “state only” requirements into these permits. Those “state only” requirements do not become federally enforceable merely because they are included in a Title V permit.

The shipyard processes potentially subject to an “applicable requirement” include asbestos removal; coating operations; decreasing; steam generation; and plating. Other shipyards processes that are less common or less likely to be subject to an applicable requirements are also discussed below.

The U.S. EPA typically focuses its own rule development processes on significantly large “new” sources of pollution, on large existing sources of pollution in areas with air quality problems, and on hazardous air pollutants. Therefore, whether a process is subject to an “applicable requirement” or not will sometimes depend on when the process unit was installed, where it is, and how large it is. In practice, many shipyards required to obtain Title V permits because of the Marine Coatings NESHAP may find that few or no other processes at the shipyard are subject to an “applicable requirement.”

A few “applicable requirements” are spelled out in detail in federal regulations and apply as described in those regulations. Key examples for shipyards include the marine coatings NESHAP, the asbestos demolition NESHAP, the §112(r) accidental release program, and “new source performance standards” (NSPS) for some new and larger fuel burning units at shipyards. Specific requirements of this kind are discussed below in the context of types of shipyard units and processes.

A second set of applicable requirements consists of technology-based “retrofit” requirements that states are obliged to impose on significant sources of pollution in non-attainment areas. The 1990 amendments to the Clean Air Act require non attainment areas for ozone and PM<sub>10</sub> to impose retrofit requirements on major sources of NO<sub>x</sub>, VOC, PM<sub>10</sub> and PM<sub>10</sub>precursors. <sup>27/</sup> In most cases retrofit requirements are based on “reasonably available control technology” (RACT); for a few source categories (including marine coatings) and in

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<sup>27/</sup> NO<sub>x</sub> retrofits are not required where EPA determines that reducing NO<sub>x</sub> will not contribute to attainment.



serious PM<sub>10</sub> non attainment areas retrofits must be based on “best available control measures” (BACM) as determined by EPA.

For a few categories of Sources, RACT requirements are based on EPA guidance in the form of “control technique guidelines” (CTGS), which are typically published by NTIS and announced in the Federal Register. CTGS are not binding regulations, but deviations from this EPA guidance must be justified or the required SIP rule is unlikely to be approved. RACT or BACM retrofit requirements are imposed and administered by states, through federally enforceable rules that are added to the state implementation plan (SIP). In some cases, these requirements may also be incorporated into (pre-Title V) permit conditions.

In addition to these mandated retrofit requirements, many states have unnecessarily included other rules (e.g., rules concerning nuisance or opacity) in their SIPs. Once in the SIP, these other rules also become “applicable requirements.”

A third set of applicable requirements consists of requirements imposed by the state or region on a case-by-case basis through the pre-construction new source review (NSR) process. NSR requirements imposed on “major” new or modified sources pursuant to a SIP-approved NSR program are federally enforceable “applicable requirements.” EPA asserts that “minor” NSR requirements imposed under a SIP approved program are also “applicable requirements” that must be included in Title V permits; this issue is likely to be litigated.

## II. Specific Units, Processes, And Applicable Requirements

### 1. Asbestos Demolition

40 CFR Part 61, Subpart M (40 CFR 61.140 et seq.) is a NESHAP for asbestos. 40 CFR 61.145 is a standard for demolition and renovation that applies to removal of asbestos from ships. 40 CFR 61.150 applies to waste disposal. These standards are typically implemented by states or regions based on parallel text approved as a SIP rule. EPA also retains enforcement authority.

Any shipyard that is not certain it will confine its activities over the next 10 years to new construction should identify and address the asbestos NESHAP as an “applicable requirement” in its Title V permit. If this is not done, a permit modification will be required before asbestos removal subject to the NESHAP will be possible.

The NESHAP is triggered by removal of one cubic meter of asbestos containing material (ACM) from components, removal of 80 linear meters of ACM from pipes, or removal of 15 square meters of ACM where areas can be determined. The rule requires at least 10 working days written notice prior to removal, and some NESHAP-based SIP rules may set longer advanced notice requirements. The rule also requires use of appropriate procedures to control emissions of asbestos.

### 2. Coatings

The coatings requirement of greatest significance for most shipyards is the marine coatings NESHAP, 40 CFR Part 63 Subpart II (40 CFR 63.780 et seq.; 60 FR 64330, December

15, 1995). This rule has been addressed in detail in a “plain english” guide under NSRP Project N-1-92-2 Subtask 12, “Shipyard MACT Implementation Plan.” That report is attached as Section 5 of the Title V Toolbox to this manual. Only a brief summary of the rule is provided here.

The marine coatings NESHAP applies to shipyards with the potential to emit 10 tons per year of any single HAP or 25 tons per year of an combination of HAPs. For rule applicability purposes, all HAP emissions are relevant, including emissions from operations other than marine coatings, and including any fugitive emissions. Relevant processes include abrasive blasting, fuel storage and dispensing, plating, degreasing, adhesive application, plastic layup, plastic machining, and combustion sources. 28/ The rule regulates coating operations, by prohibiting the use of marine coatings which exceed limits on VOC volatile organic HAP (VOHAP) content as applied. Separate limits are specified for general purpose coatings and for a long list of special purpose coatings. Records must be kept to verify compliance with these limits. These prohibitions on the formulation of marine coatings as applied are affective as of December 13, 1997.

The rule also regulates the handling, transfer and storage of materials that contain VOHAPs. Storage and transfer systems for these materials must be free of cracks and holes and must be kept closed unless materials are being added or removed. Handling and transfer activities must be conducted in a manner than minimizes spills.

Facilities subject to this rule must prepare a written describing how they will comply with the rule, provided training, and fulfill recordkeeping requirements. Many shipyards may find use of a plan published in a separate NSRP document (Shipyard MACT Implementation Plan and Compliance Tools, Task N1-92-2, Subtask 12) to be a convenient way to meet this requirement.

Other “applicable requirements” also apply to marine coating operations in California and Louisiana. Air districts in California have limited the VOC content of marine coatings for many years as an ozone control measure; the 1992 version of these limitations served as a starting point for the marine coatings NESHAP. These limitations are SIP rules, and in some cases are more stringent than the limitations in the marine coatings NESHAP rule. Louisiana has regulated marine coatings as toxics control measure. Louisiana’s standards pre-date the marine coatings NESHAP, and some Louisiana limits for specialty coatings are more stringent than the NESHAP. However, Louisiana has stated that compliance with the NESHAP will also be adequate under the state program.

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28/ SKP project N-1-92-1, “Evaluation of Toxic Air Emissions” (June 1995) included development of software tools that could be used to estimating potential emissions of HAPs from other processes. That work has been incorporated into the tools prepared for this project, discussed above.

Shipyards that are too small to be subject to the marine coatings NESHAP based on potential to emit, but which are “major” sources of VOCs located in ozone non-attainment areas, will also be subject to new requirements that are essentially identical to the marine coatings NESHAP within two years. EPA has issued a CTG for “Shipbuilding and Ship Repair Operations (Surface Coating)” describing RACT and BACM controls for VOCs from marine coatings (61 FR 44050, August 27, 1996). The CTG is essentially identical to the marine coatings NESHAP, and includes both VOC limits for categories of coatings as applied, and basic standards for storage and transfer of VOC-containing materials. Non-attainment areas must submit SIP rules to implement EPA’s guidance by August 27, 1997, and compliance must be required by August 27, 1998.

The CTG is likely to be important only for smaller shipyards in serious or severe non-attainment areas outside of California and Louisiana such as Houston/Galveston, Philadelphia, Port Arthur TX, Boston, Portsmouth NH, Providence RI, and Milwaukee. The VOHAP content of “compliant” marine coatings may be less than 50% of the total VOC content of such paints, making it possible to exceed major source thresholds for VOC emissions in these areas before the marine coatings NESHAP applicability threshold is reached. In California and Louisiana, potentially affected shipyards are already subject to similar RACT rules.

EPA also issued guidance on RACT for miscellaneous metal parts and products coating operations in 1978. Under the 1990 Clean Air Act this guidance has recently been applied in additional areas. Any shipyard that is a major source of VOCs in a non attainment area is likely to be subject to a SIP/ RACT rule setting VOC limits on metal parts and products coatings, even if miscellaneous parts painting is a small part of the work at the shipyard.

Some shipyards in non-attainment areas that have begun operations or expanded since 1970 may also be subject to permit conditions that limit VOC emissions from coating operations.

### 3. Combustion in Boilers, Process Heaters, and Steam Generators

EPA has promulgated a series of New Source Performance Standards for industrial steam generators, at 40 CFR Part 60, Subparts D, Db, and Dc. Subpart D (40 CFR 60.40 et seq.) applies to units constructed or modified after August 17, 1971 with a heat input rate of 250 million Btu/hr or more. There may be no such units in the shipbuilding industry. Subpart Db (40 CFR 60.40b et seq.) applies to units constructed or modified after June 19, 1984 with a heat input rate of 100 million Btu/hr or more, burning coal or oil, and sets limits on NO<sub>x</sub> and SO<sub>2</sub>. The key limitations cap NO<sub>x</sub> at 0.10 to 0.20 lbs. of NO<sub>x</sub> per million Btu when natural gas or distillate fuel is fired. Subpart Dc (40 CFR 60.40c et seq.) applies to units constructed or modified after June 9, 1989 with a heat input rate of 10 to 100 million Btu/hr, burning coal or oil, and sets limits on NO<sub>x</sub> and SO<sub>2</sub>. Unless coal is fired the rule limits only SO<sub>2</sub> emissions; the standards in the rule can be met by selecting low sulfur oils as fuel, or by firing natural gas.

In non-attainment areas, steam generators and other fuel burning units at major sources may also be subject to SIP rules promulgated to implement RACT. EPA has not issued a CTG for these units, so standards are developed by the state or region. Typically these rules will have relatively high thresholds for applicability (e.g., 50 million Btu/hour heat input rating). In

addition to numerical limits on NO<sub>x</sub> are common, a RACT rule is likely to require periodic cleaning and tuning to ensure efficient combustion, and possibly an initial source test to verify compliance with NO<sub>x</sub> limits. The specification of compliance assurance terms in a Title V permit for these units may be a contentious issue, since the rules themselves typically will not provide for periodic testing to verify compliance with numerical limits.

#### 4. Internal Combustion Engines

Large older diesel engines (e.g., for cranes, compressors, or generators) in non attainment areas may have a theoretical potential to emit NO<sub>x</sub>, singly or in combination, that exceeds major source thresholds. Promulgation of RACT requirements for such engines became an issue only with the 1990 Clean Air Act, however, and SIP RACT rules are not yet in place in many jurisdiction. Shipyards operating diesel engines of greater than 250 HP in serious or worse areas, or of 400 to 500 HP in moderate areas, should verify the status of RACT implementation in their jurisdiction.

EPA has not issued a CTG for these engines, but EPA regional offices are providing some guidance to states. Some agencies are concerned that EPA may require emissions reductions that cannot be achieved at a reasonable cost for older diesel engines. The specification of compliance assurance terms in a Title V permit for these units may also be a contentious issue, since the rules themselves typically will not provide for periodic testing to verify compliance with numerical limits.

#### 5. Fuel And Organic Liquid Storage and Dispensing Operations

An extensive set of NSPS and RACT requirements apply to the storage and transfer of petroleum based fuels and other volatile organic liquids. However, the scale of these operations at most shipyards is unlikely to trigger these requirements. NSPS standards apply to tanks of 40,000 gallon capacity or greater constructed in 1978 or later, or of approximately 10,000 gallons capacity or greater constructed in 1984 or later. (40 CFR Part 60, Subparts Ka and Kb, §60.110a and 60.110b et seq.). CTGs have also been issued. Typically, the control measures specified by NSPS and RACT rules for these sources involve measures (e.g., roofs, seals, and vapor recovery systems) that are also economically sensible to avoid product loss. Despite this, compliance assurance terms will be needed in Title V permits when these “applicable requirements” are at issue.

#### 6. Plating And Anodizing Operations

Decorative and hard chrome plating and chromic acid anodizing operations are subject to a NESHAP standard at 40 CFR Part 63, Subpart N (40 CFR 63.340 et seq.). There are no size or capacity thresholds to limit the applicability of this standard, though performance standards are relaxed somewhat for existing “small” (i.e., less than 60 million amp hour/yr rectifier capacity) hard chrome plating operations. Compliance with this standard will typically require use of wetting agents, foam blankets and/or add on control devices.

## 7. Decreasing and Cleaning

Solvent cleaning “machines” using a solution containing 5% or more methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride or chloroform (or a blend of these) are subject to a NESHAP standard at 40 CFR Part 63, Subpart T (40 CFR 63.460 *et seq.* ). This rule applies to both vapor and cold solvent degreasers, operating in batch or in-line mode. Buckets or pails with a capacity of 2 gallons or less are not covered by this rule. Wipe cleaning is not covered by the rule.

For existing units, compliance with this rule is required by December 2, 1997. Various combinations of measures to limit emissions are available as compliance options under this rule. Some existing machines are likely to require retrofits to come into compliance with the rule, unless a solvent solutions that is not subject to the rule can be substituted.

EPA issued a CTG for Solvent Metal Cleaning in 1977, and SIP rules addressing these operations are common. The NESHAP is patterned on these older rules. Typically, these rules do not apply to wipe cleaning or to machines using halogenated HAP solvents that are not reactive ozone precursors (e.g., 1,1,1-TCA or methylene chloride), so use of those HAPs has actually been encouraged by these rules. Future compliance strategies for solvent cleaning must take into account both SIP and NESHAP rules.

## 8. Polyester Resin Operations

Polyester resin operations are subject to RACT SIP rules, developed without benefit of an EPA CTG, in some non attainment areas. These rules may apply at very low usage rates (e.g., 0.5 to 1.0 gallons per day of resin and VOC solvents). These rules typically require either the use of low-VOC resins, or resins that include a vapor suppressant. Containers must be kept closed except when adding or removing materials.

## 9. Welding Operations

Welding rods used in shipyards contain chromium, some of which is emitted during welding operations. Depending on the emissions factors and risk assessment assumptions used, these operations be associated with greater estimated health risks than the coating operations regulated under the marine coatings NESHAP.

There do not appear to be any “applicable requirements” for shipyard welding operations at this time. No NSPS or NESHAP standards have been promulgated, and EPA has not indicated an intent to promulgate standards in this area. In many jurisdictions, in fact, welding is a “trivial” or “insignificant” activity for Title V purposes.

Welding fumes are extracted from some enclosed work spaces at shipyards for worker protection purposes, and filtration of such fumes is technically possible in some circumstances. NSRP report #0457, for Task N1-92-1, Subtask 1 (“Characterizing Shipyard Welding Emissions and Associated Control Options”) provides additional detail.

## 10. Abrasive Blasting Operations

Outdoor abrasive blasting operations in shipyards are typically not subject to applicable requirements at present. Some exceptions exist where early abrasive blasting rules were incorporated into early SIPs, and additional “applicable requirements” may be put in place as the implementation of RACT in non attainment areas continues.

Where rules exist, they typically include some combination of limits on opacity, requirements that smaller parts or assemblies be blasted in a contained environment, limitations on the fine particle content of blast media and requirements for the use of curtains or other partial containment devices.

## III. Streamlining Requirement Statements In Permit Application

40 CFR 70.5(c)(4) nominally requires that state Title V programs require all applications to include a “citation and description of all applicable requirements.” While this would appear to be a clear and inflexible standard, EPA’s White Paper guidance adds some potential flexibility concerning the inclusion of all federally enforceable “applicable requirements” in permit applications. This guidance may allow a facility to exclude or to streamline the treatment of the following kinds of “applicable requirements” in permit applications:

- Ž Requirements applicable to trivial, insignificant, or short term activities;
- Ž Old SIP requirements where a SIP amendment is pending;
- Ž “Environmentally insignificant” NSR requirements;
- Ž Requirements that are proposed to be “streamlined” under White Paper No. 2.

In many jurisdictions there is also some ambiguity about the need to include all “state only” requirements in Title V permit applications. Most program regulations do not include such a requirement, but many agencies expect such information.

Shipyards should take full advantage of these streamlining opportunities in their Title V permit applications. Shipyards that are subject to obsolete or conflicting regulatory requirements will want to exclude those requirements from their Title V permit application certifications, and if possible from the permit application and permit as well, to avoid inappropriate enforcement by agencies or citizens groups.

Shipyard should also take steps in their permit applications to prepare to exclude or streamline other requirements in actual Title V permits, because operational flexibility at any given shipyard is likely to be greater if the smallest set of requirements possible is included in the facility’s Title V permit. This is because some facility modifications and changes in operations

that would not be consistent with a requirement in a Title V permits may need to be reviewed and approved by the permit agency and by EPA before being implemented, <sup>29</sup> while (in most jurisdictions) modifications and changes that are not prohibited by the Title V permit (so called “off permit” changes) can be made without a prior modification to the Title V permit. Additional compliance assurance terms (e.g., monitoring, recordkeeping, reporting requirements) may also be attached to any requirements that is included in a Title V permit, whether that requirement is federally enforceable or not. This will increase compliance burdens and increase the likelihood of enforcement action. Finally, periodic compliance certifications will be required under Title V, and will be tied to the requirements in the Title V permit.

#### 1. Trivial, insignificant and short term activities

The possibility that federally enforceable applicable requirements might apply to units and processes that were themselves “insignificant” or “trivial” units was apparently not considered when 40 CFR Part 70 was promulgated. Thus, many Title V programs allow such units to be excluded from permit applications, but require associated “applicable requirements” to be identified. EPA’s guidance addresses this situation by encouraging streamlined treatment of such requirements.

White Paper I suggests that applicable requirements for infrequent short-term activities be given “generic treatment” in a permit application, by reciting a “general duty to meet all applicable requirements that would apply to any qualifying short-term activity.” (See section II .B.5.) White Paper II extends but somewhat erodes this idea, encouraging such generic treatment of applicable requirements for all insignificant units, but reiterating the need for permits to include terms to assure compliance with such generic requirements.

In general, shipyards should minimize detail concerning requirements applicable to these kinds of units both in the permit application and if possible in the permit itself.

#### 2. SIP Requirements

White Paper I provides that applicants, “after consultation with the permitting authority, should include in permit applications the State rules which, to the best of their knowledge, are in the SIP.” (See section 11.B.6.) Certification of the application in good faith is adequate; the application can be recertified if another SIP requirement is identified later.

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<sup>29/</sup> This is a significant concern today, under 40 CFR Part 70 as promulgated in 1992 and under state programs based on those regulations. The incremental burden imposed by Title V permitting, over and above the requirements of new source review, will be reduced in the future if 40 CFR Part 70 is revised as proposed by EPA and if state programs are revised to take advantage of that flexibility.

White Paper No. 2 further provides that application certifications can be based on compliance with requirements that are pending approval as SIP revisions, rather than on the approved SIP. EPA states that it will endeavor to take action on such pending revisions before a permit is actually issued.

### 3. NSR Requirements

White Paper I takes the position that only “environmentally significant” NSR requirements need to be included in Title V permits. (See section 11.B.7.) This decision reflects that fact that nominally applicable NSR requirements imposed prior to construction may have had only temporary importance, or may have been affected by a subsequent operating permit or facility modification. Therefore, NSR terms that are “obsolete, extraneous, environmentally insignificant, or otherwise not required as part of the SIP or a federally-enforceable NSR program,” terms that are “patently obsolete or irrelevant” to the operation of the source, or that are “extraneous, out-dated, or otherwise environmentally insignificant and inappropriate for inclusion in a federally-enforceable permit” need not be included in the permit.

The White Paper contains some specific examples of excludable NSR terms, such as terms regulating construction that was completed long ago, odor limitations, and limits on HAPs that are not based on federal law. However, the White Paper also clearly envisions that the omission of any NSR requirements from a permit should be a matter for the permitting authority and not the applicant to resolve. Under EPA’s guidance, an applicant would identify NSR terms proposed for revision, deletion or state-only status in its permit applications, and certify the application on that basis. It would then be up to the permitting authority to determine what to do. Permit applicants should therefore consult with the permitting authority or with legal counsel before streamlining any existing NSR terms out of an initial permit application.

An NSR issue that has not yet been fully resolved concerns the treatment of “minor NSR” requirements in Title V permits. Some states (e.g., California and Texas) have expanded their NSR programs to much smaller sources than would have been required to submit to NSR under federal law. In most states these aggressive programs were included in the SIP long ago. EPA now insists that all requirements imposed through such SIP NSR programs are federally enforceable applicable requirements. Under White Paper I sources could ask that some NSR requirements be designated as state only, but this is a cumbersome process and EPA could insist that many “minor NSR” requirements (e.g., state-law-based BACT and offset requirements) are not “environmentally insignificant.” Efforts to resolve this issue are going forward on several fronts. Texas has initiated litigation to challenge this EPA position. California is negotiating with EPA, but may litigate if necessary. San Diego’s Title V program received interim approval despite an explicit provision that these requirements are not federally enforceable; EPA has disagreed but will allow some “minor NSR” requirements to be designated as “state only” requirements until this issue is resolved.

Note that EPA’s guidance does not allow SIP rules that are not required elements of the SIP (e.g., odor limits) to be excluded from permit applications, though similar requirements imposed on a specific unit through the NSR process could potentially be excluded from the permit.



#### 4. “Streamlined” Requirements

White Paper No. 2 allows a source to propose in a permit application “to streamline multiple applicable requirements into a single set of permit terms and conditions.” This a somewhat constrained and complex process, but is strongly advised where a unit or activity would otherwise be subject to duplicative or inconsistent “applicable requirements,” e.g., under an NSPS or NESHAP rule, a SIP rule, and/or as a result of NSR. These problems are most likely to affect emissions units subject to both an NSPS rule and a more recent SIP or NSR requirements (e.g., to large steam generators that have been modified), or to operations recently subject to a MACT-based NESHAP (e.g., to plating operations). The streamlining option may also be useful for shipyards in California that are subject to SIP limits on VOCs in marine coatings, to VOC limits in the marine coatings NESHAP, and to different compliance assurance regimes under each rule.

#### 5. State Requirements

In jurisdictions that have implemented Title V as an overlay to an existing permit system, it may be possible to keep some or all “state only” requirements out of the Title V permit application and permit. <sup>30/</sup> If state-only requirements are included in the permit application or permit, they should be clearly designated as not federally enforceable. As discussed above, sources may also propose that some NSR terms that may be federally enforceable at present instead be deleted, revised or designated as not federally enforceable in the Title V permit.

Exclusion of state only requirements from the permit application is a different issue than exclusion of such requirements from the permit itself. Keeping these requirements out of the permit application will reduce permit application costs and limit the scope of the application certification. If permit application forms appear to require this information, but actual program regulations do not, a discussion of requirements and expectations with the permitting authority may be appropriate before the application is prepared.

Even if state-only requirements are included in the Title V permit, there is no federal requirement that terms or conditions be included in the permit to ensure compliance--this is required only for federally enforceable “applicable requirements.” The facility should seek to limit compliance assurance terms for state-only requirements to the terms that already apply under state law. Ideally, the permit should also include an explicit statement that a violation of state-only requirement is not a violation of the federal Clean Air Act, to ensure that enforcement of such terms remains exclusively a state matter.

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<sup>30/</sup> Where Title V permitting and preexisting state permitting programs have been “integrated” or “unified,” the permit application and permit must of course incorporate state-only requirements.

## CHAPTER 7

### ESTIMATING AND REPORTING EMISSIONS

#### I. Requirements For Emissions Information In Permit Applications

Tools for quantifying emissions from shipyard processes were developed and distributed as part of this project before EPA issued White Paper I, when it appeared to be a requirement of 40 CFR Part 70 that actual and potential emissions be quantified in permit applications for all shipyard processes that were not classified as “insignificant.” 40 CFR 70.5(c)(3) required states to develop applications forms and instructions that would call for information on “all emissions of regulated air pollutants emitted from any emissions unit,” “identification and description of all points of emission,” and information on “emissions rates.” State application forms and instructions based on these regulations called for detailed information on actual and potential emissions, disaggregated by emissions point and pollutant.

The White Paper has suggested instead that emissions information only needs to be provided where it is needed to determine whether a requirement is applicable, or whether a facility is in compliance. When information is required, it can be sometimes be provided by reference, or be descriptive instead of quantitative.

Shipyards should not rely on their program regulations, application forms and instructions to determine what emissions information must be provided in an application. Nor can applicants assume that the White Paper guidance has been embraced in their jurisdiction. Applicants should seek state agency guidance on these issues that was issued after White Paper I, or they should discuss this issue with their permitting agency before preparing a permit application.

#### II. Methods And Project Tools For Estimating Emissions

Estimating air emissions from shipyards can be a intimidating and time intensive task. Shipyards have a large variety of different types and quantities of air emissions. This is a result of the wide array of air pollutant emitting processes that must be invoked to build and repair ships. Many of these processes emit a variety of pollutants in relatively low amounts. Additionally due to the job shop nature of the shipbuilding and repair, most air emission sources in the shipyard are intermittent, other a period of days to months, rather than continuous in nature. Finally, several of the common shipyard processes such as welding, cutting and abrasive blasting have poorly defined, or substrate dependent, emission factors. All these problems make the accurate quantification of shipyard emissions more challenging than other industries.

On the positive side, the two largest sources of shipyard emissions, fuel oil fired combustion (boilers and diesel engines) and surface coating operations, are relatively straight forward (although time consuming) to estimate. Emission factors for fuel and diesel oil combustion are well established and accepted by the regulatory agencies. Marine coating emissions can be quantified using simple mass balance equations. From these two sources, the majority of all shipyard criteria and hazardous air pollutant emission can be derived.

### 1. Shipyard Processes which Emit Air Pollutants.

An overview of shipyard processes that should be considered in developing an emissions estimate is provided in Table 7-1. This Table can be used to prioritize emission inventory activities to ensure your efforts are not invested in inventorying processes which will not significantly contribute to your facility tripping Title V applicability threshold levels.

Fuel and diesel oil fired internal and external combustion processes in the shipyard will account for the vast majority of NO<sub>x</sub> and SO<sub>x</sub> emissions. In some cases these processes will also contribute to significant amount of particulate matter generation. Abrasive blasting operations will account for the majority of particulate matter emissions, when this process is performed outside without emission controls.

Marine coatings operations will contribute to the vast majority (usually greater than 95%) of all VOC and HAP emissions from the shipyard. The notable exception to this rule will be the fiberglass boat building facility where emissions from polyester lay up operations are usually the largest source of VOC and HAP.

Welding, burning and cutting operations are typically insignificant sources when making a Title V applicability determination. Emission from these processes can however be important drivers, along with marine coating operations, in a facility health risk assessment.

### 2. Shipyard Emission Rules of Thumb

Emissions from shipyards can be estimated on a gross and conservative basis by identifying all significant sources of air pollutants in the shipyard and applying the appropriate shipyard emissions rule of thumb. These rules of thumbs are provided Table 7-2 below and in Section 7 of the Title V Toolbox, attached.

These shipyard emission rules of thumb can be used by smaller shipyards to perform a “quick and dirty” (no pun intended) emission inventory to determine Title V applicability. If, after identifying all significant emission sources at the shipyard and applying the rules of thumb, the quantity of emissions remains significantly below the Title V threshold levels, a more refined inventory should not be required to determine applicability. The rules of thumb can be used by larger shipyards to prioritize their efforts in performing more refined emission inventories. For example, if after applying the rules of thumb, only the quantity of marine coatings emissions trip the Title V threshold, further inventory efforts can be focused in this area. A refined emission inventory will certainly reduce the estimated quantity of emissions, possibly providing a defensible argument that Title V should not apply.

### 3. Emission Inventory Spreadsheets

A significant portion of this project concerned the development of shipyard emission estimating spreadsheets. Originally the spreadsheets were developed in anticipation of the requirement for a detailed emission inventory in a Title V Permit application. Subsequent guidance on this issue by the EPA have apparently reduced or eliminated this requirement in most cases. Individual state programs may still require detailed, refined emissions estimates.

Table 7-1

Shipyard Sources of Criteria and Hazardous Air Pollutants

Title V Applicability

The table below identifies the relative contribution to ~~Title V applicability thresholds~~ of major shipbuilding and repair processes. The emissions of those sources identified as “substantial” should be quantified to determine if your shipyard is a “major” source and is subject to Title V permitting requirements. Note that significant and minor sources for Title V applicability determinations are not the same.

	Internal Combustion (fuel oil)	External Combustion (fuel oil)	Marine Coating	Abrasive Blasting	Welding	Burning and Cutting	Polyester Layup
NO <sub>x</sub> , SO <sub>x</sub> and CO	Significant source	Significant source	Not a source	Not a source	Not a source	Not a source	Not a source
Voc	Minor source	Minor source	Significant source	Not a source	Not a source	Not a source	Minor source
HAPs (metals)	Not a source	Not a source	Not a source	Minor source	Minor source	Minor source	Not a source
HAPs (organic)	Minor source	Minor source	Significant source	Not a source	Not a source	Not a source	Significant or minor source
Particulate Matter	Significant source	Minor source	Not a source	Significant source	Not a source	Minor source	Not a source

The spreadsheets provide for the calculation and quantification of both criteria and HAP emissions from both significant and minor shipyard emission sources. The spreadsheets have complete sets of documentation containing required information concerning the process description, emission and control information, assumption and limitation, and instructions for data input. In addition, the marine coatings and welding spreadsheets have been “front loaded” with common product data necessary to calculate emissions.

Emission calculation spreadsheets provided are written in Excel Version 4.0. All the equations are in an open format and can be modified as necessary. Since the equations are in an open format and not protected, each shipyard can modify information about emission factors and material Speciation as information becomes available. Modification and usage of the supplied spreadsheets should be performed by Environmental Engineers familiar with spreadsheets (i.e. Excel, Quattro Pro, or Lotus 123) and with emission calculations.

The emission calculation spreadsheets are all in one file with separate worksheets for each type of process. The process name is identified on the worksheet tab (i.e. WELD, PAINT, etc.) The spreadsheet name is TOTAL.XLS, which has independent emission worksheets for most shipyard operations (i.e. welding, boilers, IC engines, etc.) The spreadsheet contains two worksheets that provide totals for all shipyard operations. These two total pages are PTE and Actual. The PTE total sheet adds up all PTE columns in the associated worksheets. Similarly, the Actual worksheet totals shipyard actual emissions.

Table 7-2 - Shipyard Emission “Rules of Thumb”

Criteria Pollutants

1) VOC from coating operations, assuming average marine coating contains 3.3 lbs VOC/gallon as applied (after thinning).

- a) 60,000 gallons coating applied/year= 100 tons VOC/year
- b) 30,000 gallons coating applied/year= 50 tons VOC/year
- c) 15,000 gallons coating applied/year= 25 tons VOC/year
- d) 6,000 gallons coating applied/year = 10 tons VOC/year
- e) 600 gallons coating applied/year = 1 ton VOC/year

2) Take the total coating volume applied in a 12 month period and divide by 600 to get the approximate number of tons of VOC emitted during that same period.

3) Emissions from internal combustion sources.

Large Diesel Engines (>600 hp)

A single 750 brake horsepower diesel engine, operating 2000 hours/year will emit:

- a) 18 tons NO<sub>x</sub>
- b) 4 tons CO
- c) 360 lbs SO<sub>x</sub> (assuming diesel fuel with 3.0% sulfur content)

Gasoline and Diesel Engines (250 to 600 hp)

A single 300 brake horsepower diesel engine, operating 2,000 hours/year will emit:

- a) 9 tons NO<sub>x</sub>
- b) 2 tons CO
- C) 1,300 lbs SO<sub>x</sub>

Table 7-2 - Shipyard Emission “Rules of Thumb” (Continued)

A single 300 brake horsepower gasoline engine, operating 2,000 hours/year will emit:

- a) 3.7 tons NO<sub>x</sub>
- b) 132 ton CO
- C) 350 lbs SO<sub>x</sub>

4) Emission from external combustion engines.

A diesel fired commercial boiler, burning 100,000 gallons of No. 6 diesel fuel/year will emit:

- a) 3 ton NO<sub>x</sub>
- b) 500 lbs CO
- C) 500 lbs SO<sub>x</sub>

5) PM <sub>10</sub> emissions from abrasive blasting operations (no emissions control).

- a) 1,000 tons of slag = 1,500 lbs of PM<sub>10</sub>

Hazardous Air Pollutants

1) 90% of all HAP emissions from shipyards are derived from marine coating operations.

2) 50% of VOC emissions from marine coatings will also be HAPs (VOHAPs).

3) Annual VOHAP emissions from the shipyard can be estimated by taking the total coating volume applied in a 12 month period and dividing by 1,212 to get the approximate number of tons of VOHAP emitted during that same period .

- a) 10,000 gallons/year of marine coatings = 8.25 tons VOHAPs/year
- b) 25 tons/year VOHAP = 30,300 gallons/year of marine coatings.

The emission factors used in this document and in the spreadsheets were developed from several different federal, state and local emission calculation sources. Federal AP-42 is used predominantly for emissions estimations and will be referred to on several occasions throughout



the document. Other sources, such as the San Diego Air Pollution Control District (SDAPCD), California Air Resources Board (CARB) and Industry are also used to a lesser extent. Shipyards should consult with and educate their respective Local and State air regulatory agencies about supplied emission factors and how they should be applied to their shipyard.

The Potential To Emit (PTE) Factor is a single factor that can be applied to any process emission calculation to estimate emissions under a maximum operation scenario. The PTE Factor is used to multiply by actual emission to identify maximum potential emissions. If a company is operating at maximum capacity in a given year, their PTE Factor is equal to 1. Therefore, actual emissions is equal to maximum potential emissions. If a certain process capacity is double the capacity used in a given year the PTE Factor is equal to 2. Each process will have a PTE Factor, which will be tied to the processes maximum capacity based on potential work-load, maximum manning, maximum potential operational hours, and other variables that predict an operations maximum potential to operate.

Many processes in the shipyard produce some type of waste stream that must be taken into account when estimating emissions. A Waste Factor is used within the spreadsheets to account for waste. The Waste Factor is a percentage of total material used. For example, the Waste Factor for painting operations may be 20% of total paint used. This figure should be consistent with quantities represented in the facilities manifest management system

The emissions spreadsheets developed by this project and published in this document are guidelines to assist shipyards with estimating emission produced by several operations for Federal Title V. Permitting purposes. These emission factors and associated spreadsheets are intended to be applied by environmental engineers and other qualified persons trained in this discipline. The emission calculation spreadsheets and associated factors are not developed for use as legal standards and the National Shipbuilding Research Program (NSRP) does not advocate their use as such. However, it is recommended that individuals and organizations use these spreadsheets as a supplement to their Title V evaluation and application.

## CHAPTER 8

### PLANNING AND PROPOSING PERMIT TERMS

#### I. Goals In Planning And Proposing Permit Terms

Title V permit application forms and instructions typically do not require or invite applicants to identify the terms that they believe should be included in the Title V permit itself. EPA regulations and guidance create opportunities of this kind, however, and some shipyards may find it advantageous to begin the process of shaping permit terms when the application is submitted, or soon after that. Taking the initiative in this area can result in a permit that is more flexible and better suited to the shipyard's needs than would be likely if the shipyard is passive. Shipyards that seize the initiative in this area may also be able to mitigate the effects of EPA's proposed "any credible evidence" rule, by spelling out compliance requirements in their Title V permits.

##### 1. Limiting Impacts

The first goal of all shipyards in this area should be to prevent the imposition of new or more stringent requirements in the permit, unless these are welcome substitutes for terms that are eliminated or streamlined. Title V and 40 CFR Part 70 do not require or authorize the imposition of more stringent emissions control requirements in Title V permits, but nothing in federal law or regulations prohibits such action by state agencies.

Agency review and public comment under Title V can be expected to lead to "better ideas" at some agencies about how to limit emissions from facilities that are subject to Title V. However, sources need not submit to expanded or more stringent regulation (apart from "compliance assurance terms") in a Title V permit, unless the applicable state program regulations establish such authority. If new emission control requirements are proposed by a permitting agency, the facility should determine whether the agency has the authority to impose such requirements in a Title V permit. If there is potential authority, the facility should consider whether to challenge the agency to implement any such new requirements fairly, i.e., in regulations applicable to all similar sources, and not just in permit conditions for Title V sources.

Another way to limit the impacts of Title V permit terms is to prevent the expansion of federal enforceability to state-only requirements. <sup>31/</sup> Some permit authorities may not be highly

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<sup>31/</sup> There is room for debate about whether Title V permits can actually affect the federal enforceability status of existing requirements. Whether a requirement is federally enforceable may ultimately depend on its nature and origin, and not on the status assigned to the requirement

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motivated to make these distinctions, believing that more enforcement authority is always better, or that this issue should not be important to a source that intends to operate in compliance with its permit. But federal enforceability affects sources (and permitting agencies) well before any requirement is violated. The adequacy of existing “compliance assurance” terms will be at issue for any federally enforceable “applicable requirement” in a permit. This may ultimately mean that the state agency loses control of what the requirement means in practice and of how compliance is defined and assured. It may also mean more burdensome monitoring, recordkeeping and reporting requirements for the facility, and more work for the permitting agency, with no associated environmental benefit. Federal enforceability also triggers sweeping federal authority under Section 114 of the Clean Air Act, including broad powers for EPA to compel information to be submitted, and broad powers for EPA to supplant state regulations and permits on a case-by-case basis.

Federal enforceability of state requirements may also undermine the effective stringency of those state programs in the long run. Federal enforceability will eliminate state variance programs and make permit or rule revisions to reduce stringency much more difficult this will make the “stringent but flexible” programs that many states have favored less tolerable for affected sources and therefore less feasible in practice.

## 2. Consolidation and Rationalization

A second goal for many shipyards should be to consolidate and rationalize existing requirements.

White Paper I (if implemented by a permit authority) will allow facilities to streamline and rationalize NSR requirements. See section III.3 above. Unless this is done, permit terms that have been out of sight and out of mind may become the subject of a very public compliance certification when the permit application is submitted. The White Paper suggests that the permit applicant should identify NSR terms proposed for revision, deletion or state-only status in its permit application, and certify the application on that basis. However, sources that have already submitted applications should still approach their permitting agencies with proposals in this area.

A caution is necessary here. In some jurisdictions, the approved SIP versions of NSR rules have historically not been rigorously applied by state or regional permitting agencies. This is most likely where rule revisions were pending but not approved in the SIP, but there have also been differences between EPA and state interpretations of NSR applicability and NSR requirements. Problem areas can include establishing NSR baselines and emissions increases,

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in a Title V permit. The answer may be different for errors in identifying the status of existing requirements than when the EPA, the permit agency and source all intend that a permit requirement become federally enforceable.

netting out, BACT and LAER determinations, and the need for and validity of offsets. White Paper I clarifies that sources need not revisit prior NSR determinations when identifying applicable requirements, and some sources will be better off if they accept this invitation, and do not look too closely at prior NSR determinations for their facility. If EPA's invitation to "rationalize" NSR requirements is accepted, the likelihood that past NSR determinations will be revisited may increase somewhat.

White Paper No. 2 also allows sources to "streamline" multiple similar requirements applicable to an emissions unit into a single set of substitute requirements. above. In practice, this complex streamlining process is likely to be worthwhile only where older federally enforceable requirements are still nominally applicable, but have been supplanted in practice by newer requirements that involve different compliance specifications and compliance assurance terms. Examples include boilers, process heaters and steam generators that are subject to an older NSPS requirement, and to a more recent SIP rule or NSR requirement.

### 3. Operating Flexibility

A third goal in planning and preparing permit terms is to ensure operating flexibility for the facility. Case-by-case calibration is the key to pursuing this goal.

Some shipyards may find that the requirements applicable to their operations either do not limit operating flexibility in practice, or are inescapable. For example, small yards or yards in attainment areas may not be subject to any air pollution limitation other than the marine coatings NESHAP. If there is another emissions limit of some kind (e.g., a cap on VOCs), the limit may be so high that the facility will not need to worry about it for the foreseeable future. Regulations affecting operating procedures, limits on emissions rates that do not limit production rates, or percentage reduction requirements for some emissions may also be of little concern from an operating flexibility perspective.

In contrast, some shipyards may be subject to usage, production, or emissions caps on some or all operations. Other shipyards may anticipate expansions or modifications during the term of the Title V permits that would trigger NSR requirements, and be "significant" modifications under applicable Title V program regulations.

State or regional requirements for permit modifications should also be considered when deciding whether specific initial permit terms are needed to provide operating flexibility. 40 CFR Part 70 sets out a model for the review and approval of types of modifications, and most states have followed that model fairly closely. <sup>32/</sup> However, some states have been more

<sup>32/</sup> 40 CFR Part 70 provides for three classes of permit revisions. Administrative amendments (i.e., paper work updates) do not require public or EPA review prior to implementation. "Minor" permit modifications do not require prior public or EPA review, but

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stringent than 40 CFR Part 70 would require, typically by expanding the definition of “significant modification,” or by imposing more onerous review or pre-approval requirements on “minor modifications.” (See Chapter 4.) In these states, it will be more important to provide for operating flexibility up front in the initial Title V permit.

It should be noted here that EPA’s long-proposed revisions to 40 CFR Part 70, when promulgated and if implemented by the states, will significantly reduce the additional burdens imposed on modifications by Title V permitting. <sup>33/</sup> The period of greatest interest when planning for flexibility in a Title V permit is therefore the next three to five years. <sup>34/</sup> There is a good chance that modifications made after that time period will be subject to different and less onerous requirements.

Operational flexibility options and mechanisms are discussed in some detail below.

## II. Compliance Assurance Terms

The most contentious ground in Title V permitting is likely to be the specification of “compliance assurance terms” in initial Title V permits. (Monitoring or testing, recordkeeping,

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will typically require some advance notice to the permitting authority before being implemented. State programs vary significantly in their definitions of “minor” modification, in the amount of advance notice required, and in whether prior approval by the permit authority is needed before the modification can be made. “Significant modifications” must undergo a 30 day public notice and comment period and a 45 day EPA review before the modification can be made. With time to prepare and complete the applications, and for permitting authority review and processing, it can easily be six months or more before a significant modification can actually be made. 40 CFR Part 70 defines “significant modification” to include major modifications subject to NSR, modifications subject to NSPS or NESHAP standards, any change to any permit limit that was established on a case-by-case basis (e.g., BACT), establishing or changing any federally enforceable requirement, or any relaxation compliance assurance terms. This is along list, but some states have gone even further.

<sup>33/</sup> The proposed revisions would limit EPA review of modifications to “environmentally significant” changes, which would be defined much more narrowly than “significant modifications” under 40 CFR Part 70 at present. States would be allowed to process other modifications as administrative amendments for Title V purposes, after any review that was necessary under the NSR program.

<sup>34/</sup> While EPA should promulgate these revised rules soon, they will not be fully effective until state program regulations are revised and those revised programs are approved by EPA.

and reporting requirements are compliance assurance terms.) This is a contentious area because of the discretion that permit agencies and EPA have to specify these terms, and because of EPA's ambitious goals for "practical enforceability" in Title V permits.

EPA wants all "applicable requirements" in Title V permits to be "enforceable as a practical matter." To that end, "where the applicable requirements does not [already] require periodic testing or instrumental or non instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring" 40 CFR 70.6(a)(3)(B) requires "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit... . Such monitoring requirements shall assure the use of terms, test methods, units, averaging periods and other statistical conventions consistent with the applicable requirement." These monitoring requirements must be supported by record keeping and reporting requirements as well.

The "periodic" monitoring or recordkeeping at issue under 40 CFR 70.6(a)(3)(13) is not currently required under many NSPS, NESHAP, and SIP rules. Therefore, many sources subject to these "applicable requirements" will also be subject to new monitoring requirements when their Title V permit is issued. This will lead to increased direct costs to demonstrate compliance. The effective stringency of such requirements will also increase in the future when specific compliance assurance terms are established in the Title V permit. To avoid such impacts, sources should prepare to argue where possible that existing monitoring or recordkeeping requirements are adequate. Where this cannot be done, affected facilities should plan to make any necessary investments to assure compliance as measured by these new terms before the Title V permit become effective.

Shipyards should participate actively in the development of any new compliance assurance terms that will apply under Title V. The frequency of periodic monitoring, the test methods specified, and the averaging period specified will all affect compliance risks and costs. The substitution of non instrumental monitoring or recordkeeping for direct emissions monitoring where possible could greatly reduce costs for some facilities, but it will typically be the facility's burden to propose such approaches and to demonstrate that they meet the requirements of 40 CFR 70.6(a)(3)(B). Facility staff will also be much more aware than agency staff of the costs and other effects of recordkeeping and reporting requirements.

Some permitting agencies may be willing to defer development of new compliance assurance terms until EPA completes promulgates rules for "compliance assurance monitoring." This CAM rule will significantly affect the application of 40 CFR 70.6(a)(3)(B) to Title V sources, and it may not make sense for permit authorities to invest substantial resources in developing new compliance assurance terms under Title V until this rule is in place.

Finally, shipyards should be aware and if necessary should remind their permit authorities that 40 CFR 70.6, 70.7 and 70.8--the "practical enforceability" requirements of 40 CFR Part 70--do not apply to state-only requirements. (See 40 CFR 70.6(b)(2)). Enforcement of these state-only requirements is still a matter for state discretion. Therefore, in most jurisdictions, existing

compliance assurance terms for state only requirements should be carried over into Title V permits without changes or enhancements.

### III. Operational Flexibility

Operational flexibility under Title V is greater when the scope of the Title V permit is minimized. To the extent requirements must be included in a Title V permit, careful design of that permit can enhance operational flexibility. The specific opportunities available, and the best options to pursue, will vary across jurisdictions and with each facility's circumstances.

#### 1. "Off Permit" Modifications

The Clean Air Act prohibits operation of a source that is required to have a Title V permit except in compliance with a Title V permit. But Title V and 40 CFR Part 70 do not require inclusion of state-only requirements in Title V permits, and White Paper I may allow omission of some NSR requirements from the permit. If requirements are left out of the permit, no Title V issues are raised when a facility is modified in a way that only implicates these "off permit" requirements. Title V and federal enforcement are also not at issue if a source falls out of compliance with state-only requirements that are not incorporated into the Title V permit. These state-only requirements are still applicable, of course, but they may be subject to a variance procedure or to a more streamlined permit revision procedure that is not available under Title V.

#### 2. Flexible Requirements

The specificity of a requirement in a Title V permit also affects operational flexibility, and can determine whether a compliance problem or modification is "off permit." If an underlying regulation provides alternative means of compliance (e.g., if a rule allows use of a low VOC coating or a control device), and those options are narrowed in the Title V permit, flexibility is lost. Many other requirements can also be expressed more or less flexibly. A requirement to achieve 95% control of a pollutant is more flexible than a requirement to use a particular control device. A requirement to limit total emissions of a pollutant is more flexible than a requirement to limit production or a production input (e.g., fuel use) as an indirect indicator of emissions. Descriptions are also important: A requirement to use a specific non-HAP cleaning process is less flexible than a restriction on the use of HAP solvents; a serial number or model number is less flexible than a more generic description of a permitted piece of equipment or required control device.

To some extent, flexibility of this sort must be balanced against compliance assurance burdens. For example, it is more flexible to limit emissions than to limit equipment usage, but it will be less costly to monitor usage.

#### 3. §502(b)(10) Changes

Section 502(b)(10) of the Clean Air Act provides that approved state Title V programs must include "[p]rovisions to allow changes within a permitted facility...without requiring a

permit revision, if the changes are not modifications under any provision of title I 35/ and the changes do not exceed the emissions allowable under the permit... ." An advance notice requirement can be imposed.

Many states have not embraced this section of the Clean Air Act with much enthusiasm, because if implemented as written it would allow Title V permits to be violated in some circumstances. 36/ State programs differ widely in their treatment of §502(b)(10) changes. Operating flexibility is clearly greater in states that will allow §502(b)(10) changes with relatively short prior notice periods. Flexibility is reduced in states that have long notice periods, or that refuse to-acknowledge that some permit violations will not result in exceedances of "emissions allowable."

#### 4. Alternative Operating Scenarios

40 CFR 70.4(d)(3)(xi) and 70.6(a)(9) require state Title V programs to incorporate into permits "reasonably anticipated operating scenarios identified by the source in its application... Once these scenarios have been identified, and associated with control requirements in the Title V permit, the source can switch between scenarios without a permit modification.

Alternative operating scenarios should be important only to shipyards whose anticipated operations will be constrained by applicable permit conditions; under Title V these shipyards can specify in advance the operating scenarios that they want to address in the permit and the permitting agency must respond by setting out the conditions that will apply to that alternative scenario.

In the best case, the alternative scenario will involve a form of pre-planned emissions trading: anew activity that might be subject to additional control requirements on its own could potentially be allowed under an alternative scenario that offset emissions increases with simultaneous emissions decreases elsewhere. An alternative operating scenario can also be a useful tool for a shipyard that has relied on variances in the past, or for a facility that wants to get advanced approval for a facility modification that is anticipated in the future.

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35/ Title I sets out requirements for NSR. EPA has determined that "minor NSR" changes, even when subject to a SIP NSR rule, are not "modifications under any provision of title I" for purposes of §502(b)(10).

36/ State programs can receive interim authorization only if they "substantially" meet the requirements of Title V. 40 CFR 70.4(d)(3) (viii) makes inclusion of a provision to allow §502(b)(10) changes a requirement for interim approval, but EPA has allowed states to restrict the practical implications of such provisions in various ways.



Shipyard should avoid proposing alternative scenarios that are not really needed. While alternative scenarios may preserve some operating flexibility for shipyards that need them, they may be costly for shipyards that are not constrained by currently applicable requirements. If current permit requirements already accommodate the shipyard scenario that involves maximum emissions, they will also incidentally provide a large compliance margin when operations are less intensive. Defining a less intensive emissions scenario in a permit application may encourage the permit authority to impose more stringent emissions limits on that scenario, reducing compliance margins.

Scenarios that are in effect replacements for variances or that function as advance NSR mechanisms are also likely to involve acceptance of permit conditions (e.g., BACT or offset requirements) that would not otherwise be contained in the permit. Therefore, unless the need for the alternative scenario is clear, it may make more sense to seek a permit modification later than to build in costs or conditions up front.

## 5. Emissions Trading Under A Cap/Advanced New Source Review

40 CFR 70.4(b) (12)(iii) and 70.6(a)(1) require state Title V permit programs to include “[t]erms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade.” While this provision appears to require trading to be accommodated only if there is a trading program in the applicable SIP (e.g., a bubble rule), some state Title V programs also provide for trading at the request of the applicant even in the absence of a SIP programs.

Emissions caps are sometimes included in permits to prevent the imposition of requirements that would otherwise be applicable, e.g., NSR requirements to provide offsets or to install LAER technology. When such limits exist, it may be possible to increase operating flexibility by establishing a trading opportunity in the facility Title V permit. Various conditions apply to ensure enforceability.

Trading under a cap becomes most attractive when the compliance period is long enough to allow temporal variations in emissions to accommodate operating needs.

A recent expansion of the concept of a facility cap on emissions is the “advanced NSR” permit. Under this concept a facility accepts an overall cap on emissions at a facility, but is allowed to modify the facility without subsequent NSR review provided facility-wide emissions stay below the agreed cap. Establishing a facility wide cap on emissions will typically require acceptance of additional unit-specific restrictions and compliance assurance terms.

This is an interesting concept that may have great appeal for large facilities in non-attainment areas that must adapt rapidly to changing market demands. In contrast, normal variations in shipyard operations can typically be accommodated within existing permits, and major facility modifications that would trigger NSR typically have long lead times that can accommodate a permitting process. Therefore, the advance NSR concept probably has limited applicability to shipyards.

## 6. Streamlined Requirements

White Paper No. 2 allows Title V permit applicants to propose to replace a set of overlapping requirements applicable to an emissions unit with a streamlined requirement that is at least as stringent. For example, opacity limits or particular emission limits for a boiler might exist in an NSPS rule, a SIP RACT rule, and in an NSR permit conditions. Limits, test methods and frequencies, and recordkeeping and reporting requirements could all vary. In these circumstances a “streamlined” requirement can resolve any conflicts among requirements, and reduce administrative burdens; the streamlined requirement will of course still be as stringent as the most stringent requirement applicable under existing law.

Streamlining can preserve operational flexibility that might be lost if the Title V program made a neglected or inconsistent requirement more prominent and more enforceable. However, a review of applicable requirements for typical shipyard units suggests that streamlining should rarely be needed; the most likely potential exception is fuel burning units subject to NSPS standards.

## IV. Permit Shields

Section 504(f) of the Clean Air Act (42 U.S.C. 7661 c(f)) provides that a Title V permit may provide “that compliance with the permit shall be deemed compliance with other applicable provisions of [the Clean Air Act]” if one of two conditions related to the permit or the permitting process is met. This is a “permit shield” because a facility claimed to be in violation of an “applicable requirement” is shielded from enforcement action or citizens suits so long as it is in compliance with its permit. This a sensible statutory provision: with all the effort that goes into a Title V permit, the facility should be able to rely on the permit as a statement of applicable requirements.

Unfortunately, formal permit shields may not be available under some state programs, <sup>37/</sup> and in many programs a request for a permit shield will trigger a requirement to provide additional information in the permit application, and to pay for additional agency review of that

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<sup>37/</sup> EPA’s early position was that a state program needed to expressly enable permit shields before any shield could be created. Some states did not include permit shield provisions in their program regulations. However, in White Paper No. 2, in the context of “streamlined requirements,” EPA suggested that a statement shielding the facility from requirements that were streamlined away be included in Title V permits even in states that did not have permit shield provisions in their rules. In practice, what the permit says is likely to matter more than what the underlying permit regulations do not say: any statement in a Title V permit that a specific requirement is not applicable is likely to be a substantial deterrent to EPA or citizen attempts to enforce that requirement.

application. This is because Section 504(f) and 40 CFR 70.6(f) allow a shield only if (1) underlying applicable requirements are identified in the permit; or (2) the permit expressly determines that certain requirements are not applicable to the source. An example of the first approach to establishing a shield would be to establish specific conditions in the permit to satisfy the requirements of an identified NSPS or SIP RACT rule. If the agency made a mistake or adjustment in this process (e.g., if an inadequate technology-based requirements was substituted for a performance standard), the source would be shielded--at least until the permit was reopened and corrected. An example of the second approach to a shield would be to identify a specific regulation as an inapplicable requirement in the permit--e.g., a SIP rule for non-marine coatings. If this determination was later questioned by EPA or a citizen's group (e.g., on grounds some ship's components were "metal parts and products" not exposed to a marine environment), the facility would again be shielded until the permit was changed.

Permit shields have important limitations. They cannot protect the source against unrecognized ambiguity, or against applicable requirements that are overlooked by everyone during the permit process. EPA has further eroded the value of permit shields by denying the shield for any "minor" permit modification that has not undergone public comment and EPA review. Finally, permit shields may be fragile; EPA's position is that a source must be in compliance with all terms of its Title V permit for any permit shield to exist. Thus, a recordkeeping error related to one unit could nullify the permit shield for an unrelated operation.

In general, shipyard should seek a permit shield when the implementation of an applicable requirement in a Title V permit does not completely correspond to the underlying federal regulation, SIP rule, or NSR permit. A shield should also be sought where any ambiguity concerning the applicability of a specific requirement is known to exist, or where a requirement imposed or not imposed in connection with the NSR process could be questioned. 38/

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38/ Shielding NSR requirements may not be feasible. EPA has rejected a request for a shield of this kind in Oregon, stating that procedural rules were not "applicable requirements" that could be shielded, and that a determination of whether those rules had been properly applied in determining the true "applicable requirements" for a specific source would be a difficult task. Reviewing all prior source modifications and NSR determinations could also be a very touchy task, especially in jurisdictions that have enforced newer NSR rules while older rules remained in the SIP. On the other hand, this is an area in which a permit shield may be most valuable. EPA has second guessed state BACT and LAER determinations after the fact in the past (see, e.g., *U.S. v. Solar Turbines, Inc.*, 732 F. Supp. 535 (1989)), and may demand large fines when it believes NSR requirements were applicable and were not followed.

## CHAPTER 9

### PERMIT MODIFICATION, REOPENING, AND RENEWAL

#### I. Permit Modifications

A major concern of the regulated community when 40 CFR Part 70 was promulgated was that the procedures EPA had specified for approving permit modifications would unduly impede and delay necessary facility modifications. These concerns have led to three subsequent EPA proposals to modify 40 CFR Part 70, all focused principally on modifications. However, no final rule amending 40 CFR Part 70 has been promulgated, and state program regulations cannot be modified to implement the added flexibility that EPA has proposed until regulations are in place.

The modification procedures in the applicable state program should be considered when planning a Title V permit and application, because operating flexibility can be provided either by pre-planning a permit as discussed in Chapter 8 above, or by modifying that permit when necessary. If permit modification requirements and timelines are consistent with the shipyard's anticipated needs, a less complex initial permit is feasible.

State program provisions concerning permit modifications are quite similar in basic outline but vary significantly on critical details. With a few exceptions, state programs track 40 CFR Part 70's division of modifications into "administrative," "minor" and "significant" categories. Typically, administrative changes can be made without public notice or comment, EPA review, or advanced agency approval. "Significant" modifications require public participation, prior approval by the permitting authority, and EPA review, as specified in 40 CFR Part 70. The facility modifications that EPA has said must be treated as "significant" are classified that way in all states. <sup>39/</sup> However, state rules used to classify modifications as minor versus significant, and the requirements imposed on minor modifications, vary significantly.

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<sup>39/</sup> Programs differ in whether (future) "minor NSR" modifications are classified as "significant" for Title V purposes. This is partly because EPA's views on this issue have vacillated. The 1992 preamble to 40 CRF Part 70 was subject to interpretation on this point, but in 1994 EPA took a clear position that minor NSR changes were "significant" modifications. In its most recent set of proposed changes to 40 CFR Part 70, EPA has reversed this interpretation. During this period some states implemented programs that adopted EPA's temporary position that these changes were "significant" other programs resisted this interpretation and still received interim approval.

Requirements for approval of modifications could change significantly when revisions to 40 CFR Part 70 are promulgated, and incorporated into state programs. If EPA's proposal 40/ are fully implemented, most modifications should be about as difficult with Title V in place as they would be under existing NSR programs without Title V. The most significant exception would be modifications that "netted out" of NSR review.

## II. Reopening and Renewal

All Title V permits will provide that the permit can be reopened "for cause," and that it have a fixed, renewable term (typically five years).

Reopening allows the permitting authority or EPA to correct errors or omissions in the permit, to incorporate a new applicable requirements or requirements that become newly applicable to facility, or to ensure compliance with applicable requirements. (40 CFR 70.7(9 and (g).) Reopening is required where a new applicable requirement is promulgated for a facility that has three or more years remaining in its permit term. Typically, applicable requirements that have been promulgated with a future effective date will be incorporated in the permit when it is issued.

As in the NPDES program, a nominally expired Title V permit remains in effect if a timely and complete application for renewal has been submitted and is pending. 40 CFR Part 70 allows approval of state programs that require renewal applications to be submitted between 6 and 18 months prior to expiration of the permit. Procedures applicable to renewals are the same as for initial permits; there must be public notice and an opportunity for comments, and time for EPA review. As a companion to its proposal to reduce contemporaneous review of proposed permit modifications, EPA has said that it will use the permit renewal process as an occasion for catching up on such reviews. Therefore, sources should not presume that all permit modification approved by the state permitting authority will be incorporated into the renewed Title V permit without change.

40/ 59 FR 44460 (August 29, 1994), 60 FR 20804 (April 27, 1995), and 60 FR 45530 (August 31, 1995).

## **APPENDIX A**

July 10, 1995

**MEMORANDUM**

SUBJECT: white paper-for Streamlined Development of part 70 Permit Applications

FROM: Lydia N. Wegman, Deputy Director /s/  
Office of Air Quality planning and Standards (MD-10)

TO: Director, Air, pesticides and Toxics  
Management Division, Regions I and IV  
Director, Air and Waste Management Division,  
Region II  
Director, Air, Radiation and Toxics Division,  
Region III  
Director, Air and Radiation Division,  
Region V  
Director, Air, pesticides and Toxics Division,  
Region VI  
Director, Air and Toxics Division,  
Regions VII, VIII, IX, and X

Please find attached a White Paper on Part 70 permit applications. The paper is designed to streamline and simplify the development of part 70 permit applications. The guidance was developed to respond to the concerns of industry and permitting authorities that preparation of initial permit applications was proving more costly and burdensome than necessary to achieve the goals of the Title V permit program.

The White Paper provides several streamlining improvements. Among them, it allows industry to:

Provide emissions descriptions, and not emissions estimates, for emissions not regulated at the source, unless such estimates are needed for other purposes

such as calculating permit fees;

Submit checklists, rather than emission descriptions, for insignificant activities based on size/production rate and for risk management plans potentially owed under section 112(r);

Provide citations for applicable requirements, with qualitative descriptions for each emissions unit, and for prior new source review (NSR) permit;

Exclude certain trivial and short-term activities from permit applications;

Provide group treatment for activities subject to certain generally-applicable requirements;

Certify compliance status without requiring consideration of previous applicability decisions;

Use the Part 70 permit process to identify environmentally significant terms of NSR permits, which should be incorporated into the part 70 permit as federally-enforceable terms; and

Submit tons per year estimates only where meaningful to do so and not, for example, for section 112(r)-only pollutants; such estimates should be based on generally-available information rather than new studies or testing.

There is an immediate need for the implementation of this guidance. Increasing numbers of sources are becoming subject to the requirement to file a complete part 70 application as more State part 70 programs are approved. I strongly encourage you to work with your States to effect near-term use of the White Paper guidance to streamline the application process.

I want to thank you and your staff for your support in developing this guidance and invite your suggestions on what additional guidance is needed to improve further the initial implementation of title V. If you should have any questions regarding the attached guidance, please contact Michael Trutna at



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Attachment

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WHITE PAPER FOR  
STREAMLINED DEVELOPMENT OF PART 70 PERMIT APPLICATIONS

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OFFICE OF AIR QUALITY PLANNING AND STANDARDS

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**I. INTRODUCTION**

The EPA is issuing this guidance to enable States to *take* immediate steps to reduce the costs of preparing and reviewing initial part 70 permit applications. A perceived lack of clarity in these requirements has led to an unintended escalation in permit application costs. Too often, sources have felt compelled to make conservative assumptions to assure themselves of receiving the "application shield" and avoiding enforcement actions.

Title V of the Clean Air Act (the Act) and its implementing regulations in part 70 set forth minimum requirements for State operating permit programs. In general, this program was not intended by Congress to be the source of new substantive requirements. Rather, operating permits required by title V are meant to accomplish the largely procedural task of identifying and recording existing substantive requirements applicable to regulated sources and to assure compliance with these existing requirements. Accordingly, operating permits and their accompanying applications should be vehicles for defining existing compliance obligations rather than for imposing new requirements or accomplishing other objectives.

There is an immediate need for this guidance. Most States and those local air pollution control agencies participating in the program (hereinafter referred to as "states") are expected to receive approval by the fall of 1995 of their part 70 operating permit programs to implement title V of the Act. As a result, most sources are in the process of preparing their initial applications, a number of sources have already submitted their initial applications, and a few part 70 permits have already been issued. As programs start to be implemented, concerns are being raised by States and sources as to the expectations for complete permit applications and permit content, the intended scope of the program, and the respective responsibilities of sources, permitting authorities, and the Environmental Protection Agency (EPA) in making implementation decisions in accomplishing permit

issuance.

The EPA recognizes that the burden for filing a complete application may vary significantly among States as does the nature of their applicable requirements, status of source compliance, air quality conditions, the type of permit fee schedule, and the size and complexity of their industry. However, EPA believes that the mentioned problems, if unaddressed, would threaten implementation of the title V program, and thus warrant a timely response. The clarifications contained in this policy statement are made under the current part 70 regulations and should typically not require State rulemaking. The EPA strongly urges States to allow sources to take near term advantage of the flexibility provided by this paper, particularly during the initial implementation phase of the program. It is imperative that the provisions and clarifications of this paper are implemented by States as quick as possible. Most States need not wait for EPA approval before implementing this guidance, however they are encouraged to consult with the appropriate EPA Regional Office as they adjust implementation of their programs.

Section II of this paper articulates how part 70 allows permitting authorities considerable flexibility to make decisions regarding the completeness of applications and their adequacy to support initial permit issuance. This guidance makes clear that the part 70 rules do not impose unreasonable permit application preparation burdens. In particular, it accomplishes application streamlining by enabling and encouraging the use of:

Tons per year (tpy) estimates for emissions units and pollutant combinations subject to applicable requirements, and only where meaningful to do so (e.g., not for section 112(r) -only pollutants) ; such estimates can be based on generally-available information rather than new studies or testing;

Emissions descriptions, not estimates, for emissions not regulated at the source (unless needed for permit fee calculation, for purposes of establishing a permit shield or a plantwide applicability limit (PAL), or for resolution of applicable requirement coverage or major source status) ;

Checklists rather than emission descriptions for insignificant activities based on size/production rate and risk management plans potentially owed under section 112(r) ;

Exclusions for certain trivial and short-term activities from permit applications (see Attachment A);

Group treatment for activities Subject to certain generally-applicable requirements;

Part 70 permit process to reconcile which terms of existing new source review (NSR) permits should be incorporated into the part 70 permit as federally-enforceable terms;

Citations for applicable requirements with qualitative descriptions for each emissions unit, and for prior permits as they may be revised; and

Certifications of compliance status which do not require re-evaluation of previous applicability decisions.

This paper affirms EPA's strong commitment to successful program implementation. It is the first in a series of policy statements intended to alleviate known implementation concerns within the framework of the existing part 70 regulations. At the same time, the Agency is developing rulemaking which will afford a new streamlined approach to part 70 permit revisions and provide other relief not possible under the current rule. The policies set out in this paper are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party.

## **II. STREAMLINED DEVELOPMENT OF COMPLETE Part 70 APPLICATIONS**

### **A. Current Requirements for Complete Applications (§ 70.5)**

Within 12 months of the effective date of a part 70 program, all sources subject to the program must submit complete permit applications. The State may establish, and many have established, a phased schedule for application submittals.

Section 70.5(c) (3)- requires a permit application to describe all emissions of pollutants for which a source is major and all emissions of regulated air pollutants. It also authorizes the permitting authority to obtain additional information as needed to verify which requirements are applicable to the source. Applications are also sometimes relied upon to evaluate the fee amount required under the approved permit fee schedule. Emissions information for these purposes does not always need to be detailed or precise. Information for applicability purposes need only be detailed enough to resolve any open questions about which requirements apply. Information for fee purposes only has to be consistent with what is required in applications by the permitting authority to implement its fee schedule. No information is needed when this activity is done outside the part 70 permit application process. Finally, in cases where the applicable requirement will be established or defined in the part 70 permit (e.g., PAL), the part 70 permit application must contain additional information as needed to verify emissions levels and the basis for measuring changes from them.

Section 70.5(c) further requires the application to contain a compliance plan describing the compliance status of the source with respect to all applicable requirements. For sources that will not be in compliance at the time of permit issuance, the application must contain a narrative description of how the source will achieve compliance and a detailed schedule of remedial measures leading to compliance. If the source is in compliance, the application need only contain a statement that the source will continue to comply. For applicable requirements that will take effect during the permit term, the compliance plan may be a statement that the source will meet them. Each application must also include a certification of the source's compliance status with respect to each applicable requirement and a statement of the methods used for determining compliance. Finally, the responsible official must also certify that the application form and the compliance certification are true, accurate, and complete based on information and belief formed after reasonable inquiry.

Each part 70 program must contain criteria and streamlined procedures for determining when permit applications are complete. Applications for *an* initial part 70 permit may be considered complete if they have information sufficient to allow the

permitting authority to begin processing the application. Unless the permitting authority determines that an application is not complete within 60 days, it will be considered complete by default. If the source submits a timely and complete application the source is shielded against penalties for operating without a permit until its part 70 permit is issued (i.e., the source is granted the "application shield").

Even after applications have been initially determined to be complete, the source must submit any additional information requested by the permitting authority to determine, or evaluate compliance with applicable requirements within the reasonable timeframe allowed by the permitting authority, to maintain the effect of the application shield. In addition, until release of the draft permit, sources have an on-going responsibility to correct information or submit supplemental information needed to prepare the permit. The timeframe for updates will depend on the permitting authority's schedule for performing the technical review for a given application. The application shield once granted remains in effect until permit issuance even where the source augments its original application submittal in response to requests for more information by the permitting authority.

As mentioned, considerable confusion exists as to what constitutes a complete application under the requirements of part 70. Due to the significant new penalties for knowing violations and the extremely visible forum for processing permit applications, in the absence of clear guidance many sources have made **or** are making very conservative assumptions regarding their obligations. For example, many in the regulated community feel that a part 70 application can be complete only if it exhaustively catalogues every past and present emitting activity with great precision. Others fear that an application can never be complete since many Act requirements are still evolving, confusion exists as to which requirements are applicable to the source (e.g., what constitutes the State Implementation Plan (SIP) ), **or** no monitoring data exists upon which to base the initial certification of compliance. Other concerns have been raised regarding the choice of emissions estimation techniques and the amount of information needed to support decisions of applicability or exemption, especially those involving the appropriate NSR for previous construction activities.



There is also a general apprehension that EPA will second guess any or all of these judgments during its review period and thereby impede the permit issuance process. Others are concerned that even if complete applications could be filed, they soon would grow obsolete and require updates before a draft permit could be prepared. In addition, there are Concerns that EPA will issue guidance in the future which Would establish extensive new requirements concerning the content of a complete application. As a result, worst-case assumptions for various determinations are being made effecting a level of rigidity and rigor as well a cost unintended by the current regulations.

This guidance is intended to correct these misunderstandings. It is intended to give States and sources direction on how States can reduce these burdens while achieving the requirements of title V. As previously stated, EPA believes that these streamlining ideas can and should be implemented under the current part 70 rule for most States. To the extent State forms reflect the current confusion, the Agency wishes to clarify the issues sufficiently for States to revise the portion of their forms implementing title V to be consistent with this guidance.

## **B. Content of Part 70 Permit Applications**

### **1. Overview**

This section describes the level of information which must be contained in a part 70 permit application for it to be considered complete. This guidance clarifies the minimum requirements under the Federal regulations for acceptable part 70 permit applications. It grants a substantial degree of discretion to State permitting agencies. The EPA recognizes that different States may adopt different approaches to these minimum requirements depending on their local needs and circumstances, and that others may elect to go beyond those minimum requirements. However, at least in the initial program phase, EPA urges States to keep part 70 application requirements to the minimum needed to identify applicable requirements. In many instances, a qualitative description of emissions, or sometimes no description at all, will satisfy this standard.

This section specifically clarifies that there are different expectations for information from emissions units depending on

whether and how applicable requirements apply. In addition, this section provides several policy clarifications aimed at lowering current application burdens associated with addressing insignificant activities, generic grouping of emissions units and activities, short-term activities, incorporation of current NSR permit conditions, section 112(r) requirements, and Research and Development (R&D) activities.

## **2. Required Emissions Information And Source Descriptions**

Applications should contain information to the extent need to determine major source status, to verify the applicability of part 70 or applicable requirements, to verify compliance with applicable requirements, and to compute a permit fee (as necessary). Section 70.5(c) requires the application to describe emissions of all regulated air pollutants for each emissions unit. This would require at least a qualitative description of all significant emissions units, including those not regulated by applicable requirements.

While part 70 does not require detailed emissions inventory building, it does require limited emissions-related information for each pollutant and emissions unit combination which is regulated at the source. Section 70.5(c) (3) (iii) requires for such units emissions rate descriptions in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. The EPA interprets the tpy estimates to not be required at all where they would serve no useful purpose, where a quantifiable emissions rate is not applicable (e.g., section 112(r) requirements or a work practice standard), *or* where emissions units are subject to a generic requirement (see Section 4. **Generic Grouping of**

On the other hand, more emissions information would presumptively be required to verify emissions levels and

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<sup>1</sup>The term "significant" as used in this policy statement does not have the meaning as used in § 52.21 (e.g., 15 tpy PM-10, 40 tpy VOC) but rather means that the emissions unit does not qualify for treatment in the application as an insignificant emissions unit.

monitoring approaches where PALs or other plantwide emissions limits would be established or defined in part 70 permits. Another situation where additional emissions information might be needed is where the permitting authority would be granting the shield relative to a decision of non-applicability where a source is claiming an exemption based on an emissions level cutoff in a standard that has been issued for the category to which the emissions unit potentially belongs. In such cases additional information to support a determination that a requirement is not applicable may well be required. In addition, for the minority of States that use the part 70 application to determine the first year's permit fee, the application and its description of all regulated air pollutants for presumptive fee calculation must also be adequate for that purpose. Finally, additional emissions information might also be necessary in some cases to resolve a dispute over whether a particular requirement is applicable, or whether a source is major for a particular pollutant (additional information would not be necessary where a source would stipulate to the applicability of the requirement and/or its major status).

Wherever emissions estimates are needed (unless the source independently decides to more accurately estimate emissions); use of available information should suffice. Any information that is sufficient to support a reasonable belief as to compliance or the applicability or non-applicability of requirements will be acceptable for these purposes. That could include AP-42 emission factors, emissions factors in other EPA documents, or reasonable engineering projections, as well as test data (see Section C. Quality of Required Information).

Any required tpy estimates are not to be included as federally-enforceable part 70 permit terms, unless otherwise required by an applicable requirement or requested by the source to avoid one. In addition, where tpy descriptions are needed, EPA does not believe that part 70 requires multiple forms of emissions estimates (i.e., actual allowable, and potential emissions). Also, where an emissions estimate is needed for part 70 purposes but is otherwise available (e.g., recent submittal of emissions inventory), then the permitting authority can allow the source to cross-reference this information for part 70 purposes.

Even if tpy estimates are not necessary, part 70

applications must describe all significant emissions units, including any which are not subject to any applicable requirement at any given emissions unit. Such unregulated emissions can include hazardous air pollutants (HAP) listed under section 112(b) of the Act and criteria pollutants that are unregulated for a particular emissions unit. A general description of emissions (i.e., simple identification of the significant pollutant or family of pollutants believed to be emitted by the emissions unit) should suffice. For part 70 purposes, the descriptions of emissions units themselves also can be quite general (i.e., descriptions need not contain information such as UTM coordinates or model and serial numbers for equipment, unless such information is needed to determine the applicability of, or to implement, an applicable requirement). Negative declarations are not required for pollutants that are not emitted by the emissions unit.

Some examples may help to illustrate where only source descriptions of regulated and unregulated emissions *are* necessary for title V purposes:

An application for a de-greaser subject to a requirement to have a certain type of lid could describe the relevant applicable requirement and simply identify that it emits volatile organic compounds (VOC) and falls within the scope of the regulation. Quantification of the VOC emissions would not be necessary since the level of emissions is not relevant to the standard.

An application for a storage tank subject to a requirement to have a certain type of seal, in addition to describing this requirement, would only need to generally identify the types of pollutants emitted such as VOC and HAP generally.

An application for a boiler that is grandfathered under the SIP could just identify that PM, SO<sub>2</sub>, NO<sub>x</sub>, VOC, lead, and HAP are emitted and that no applicable requirement is relevant.

### 3. Insignificant Activities

Section 70.5(c) allows the Administrator to approve as part of a State program a list of insignificant activities which need not be included in permit applications. For activities on the list, applicants may exclude from part 70 permit applications information that is not needed to determine (1) which applicable requirements apply, (2) whether the source is in compliance with applicable requirements, or (3) whether the source is major. If insignificant activities are excluded because they fall below a certain size or production rate, the application must describe any such activities at the source which are included on the list. Even for such insignificant activities, the process for listing them in the application can be fairly simple. The permitting authority could allow the source merely to list in the application the kinds of insignificant activities that are present at the source or check them off from a list of insignificant activities approved in the program.

In addition to the insignificant activity provisions of § 70.5(c), there is flexibility inherent in § 70.5 to tailor the level of information required in the application to be commensurate with the need to determine applicable requirements. The EPA believes this inherent flexibility encompasses the idea that certain activities are clearly trivial (i.e., emissions units and activities with specific applicable requirements and with extremely small emissions) and can be omitted from the application even if they are not included on a list of insignificant activities approved in a State's part 70 program pursuant to § 70.5(c). Attachment A lists examples of activities which EPA believes should normally qualify as trivial in this sense. This list is intended only as a starting point for States to consider. The determination of whether any particular item should be on the State's trivial list may depend on State-specific factors (e.g., whether the activity is subject to the requirements of the SIP). Permitting authorities can also allow, on a case-by-case basis without EPA approval, exemptions similar to those activities identified in Attachment A. Additional exemptions, to the extent that the activities they cover are not clearly trivial, still need to be approved by EPA before being added to State lists of insignificant activities.

#### 4. Generic Grouping of Emissions Units and Activities

Questions have arisen regarding whether emissions units and

activities may be treated generically in the application and permit for certain broadly applicable requirements often found in the SIP. Examples of such requirements brought to EPA's attention include requirements that apply identically to all emissions units at a facility (e.g., source-wide opacity limit general housekeeping requirements, and requirements that apply identical emissions limits to small units (e.g., process weight requirements). These requirements are sometimes referred to "generic," because they apply and are enforced in the same manner for all subject units or activities.

These requirements can normally be adequately addressed in the permit application with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and the manner of its enforcement are clear. Even where such generic requirements attach to individual small emissions units or activities, requiring a unit-by-unit or activity-by-activity description of numerous units or activities would generally impose a paperwork burden that would not be compensated by any gain in the practical enforceability of such relatively simple requirements. Therefore, provided the applicant documents the applicability of these requirements and describes the compliance status as required by § 70.5(c), the individual emissions units or activities may be excluded from the application, provided no other requirement applies which would mandate a different result. Similarly, the part 70 permit which must assure compliance with the generic applicable requirement would be written without specificity to applicable emissions units or activities.

In EPA's view, the validity of this approach stems from the nature of these applicable requirements. Accordingly, EPA believes application of this principle for grouping subject activities together generically should not depend on whether those activities qualify as trivial or insignificant. Where the applicable requirement is amenable to this approach, that is, where (1) the class of activities or emissions units subject the requirement can be unambiguously defined in a generic manner and where (2) effective enforceability of that requirement does not require a specific listing of subject units or activities permitting authorities may follow this approach regardless of whether subject activities have been listed as trivial or insignificant.

A lengthy list of the types of requirements suitable for this treatment is not possible here because, among other reasons, the examples of which EPA is aware are SIP requirements, and so vary from State to State. permitting authorities are in the best position to decide which SIP requirements can be treated in this generic fashion. However, permitting authorities may wish to consult with the EPA Regional office in advance to clarify any uncertainties.

#### 5. Short-term Activities

States can treat many short-term activities (e.g., activities occurring infrequently and for a short duration at a part 70 source) subject to an applicable requirement in the same fashion as activities subject to a generic requirement (see previous discussion). Since these activities are not present at the source during preparation of the permit, the most that can be expected is generic treatment in the application. For such activities, the application and permit would not include emissions unit specificity but instead would contain a general duty to meet all applicable requirements that would apply to any qualifying short-term activity. Short-term activities which are not subject to an applicable requirement should be classified as insignificant activities or would qualify as trivial, and so would not be included in either the part 70 application or permit.

For example, a contractor-run sand lasting operation that is subject to a SIP limit for particulate matter might be operated on an infrequent but recurring basis might qualify for the general duty approach. However, where such activities re-occur with considerable frequency, the permitting authority could require them to be included in the permit. The source would also be obligated to revise the permit if operation of any short-term activity would be in conflict with the permit. If short-term construction activities occur, the part 70 permit application would need to address them only if they are subject to the State's NSR program or are otherwise in conflict with the envisioned part 70 permit.

#### 6. Determination of Applicable SIP Requirements

One of the undisputed challenges facing both State and the

regulated community in their efforts to develop complete applications is the determination of the applicable SIP requirements for a part 70 source. In some situations, it may be difficult to identify all the requirements in the SIP which are applicable to a particular source. Applicants, after consultation with the permitting authority, should include in permit applications the State rules which, to the best of their knowledge, are in the SIP. A good faith estimate will be enough to support both a valid compliance certification and a "completeness" determination. Review by the permitting authority, EPA, and the public may provide additional insight into whether any other applicable requirements exist. Any additions should not affect the validity of the original permit application and its eligibility for the application shield or of the accompanying compliance certification. However, the source would have to update its certification to account for any subsequently identified SIP requirements.

At least one State has developed a checklist of its air rules and required the applicant to check off which ones apply and select appropriate codes for rationalizing which ones do apply. This type of approach should aid the source in providing in the part 70 application its understanding of what applicable requirements apply. Sources in such a State may rely on the checklist. The EPA has also provided a contractor to document the approved SIP for each State. Where an EPA compilation exists, sources may rely on it as well. This process is well underway for most States and permitting authorities and, in many cases, EPA Regional Offices can provide the rule citation of the State rules that have been approved as part of the SIP.

Where a State has adopted a rule that is pending approval by EPA into the SIP, sources (if advised by the permitting authority) could in their applications note that the corresponding State-only requirements will become federally enforceable upon SIP approval. The permitting authority during review of the application would be responsible for determining the SIP had been approved. If so, then the permitting authority would incorporate the requirements into the federally-enforceable portion of the permit. If the requirements had not been approved into the SIP, the permitting authority could incorporate the pending requirements into the State-only enforceable portion of the permit and note that the requirements would become federally



enforceable upon SIP approval. The federally-enforceable portion of the permit would include the existing SIP requirements and condition them to expire upon EPA approval of the SIP revision. Once the SIP revision is approved, the pending permit terms would become federally-enforceable and the permit terms based on the superseded SIP rule would become void.

## **7. Incorporation of Prior NSR Permit Terms and Conditions**

This paper provides guidance to States and sources in devising a means to revise NSR permit terms as appropriate (including classification as a State-only enforceable term) in conjunction with the part 70 permit issuance process. As used here, "new source review" refers to all forms of preconstruction permitting under programs approved into the SIP, including minor and major NSR (e.g., Prevention of significant deterioration). Section 70.2 defines any term *or* condition of a NSR permit issued under a Federal or SIP-approved NSR program as being an applicable requirement. The Agency has concluded, however, that only environmentally significant terms need to be included in part 70 permits. The EPA recognizes that NSR permits contain terms that are obsolete, extraneous, environmentally insignificant, or otherwise not required as part of the SIP or a federally-enforceable NSR program. Such terms, as subsequently explained, need not be incorporated into the part 70 permit to fulfill the purposes of the NSR and title V programs required under the Act.

Minor NSR, in particular, is a program which the State has discretion to mold as necessary to be consistent with the goals of the SIP. Therefore, the permitting authority has very broad discretion in determining the terms of minor NSR. This discretion also exists to a much lesser extent in crafting major NSR permits, since the Act and EPA regulations contain several express requirements for review of major subject sources. Many NSR permit terms written in the past for both minor and major NSR, however, were understandably not written with a view toward careful segregation of terms implementing the Act from State-on requirements.

The EPA believes that the part 70 permit issuance process, involving as it does review by the permitting authority, public, and EPA, presents an excellent opportunity for the permitting

authority to make appropriate revisions to a NSR permit<sup>2</sup> contemporaneously with the issuance of the part 70 permit. The public participation procedures for issuance of a part 70 permit satisfy any procedural requirements of Federal law associated with any NSR permit revision. This parallel processing approach is also an excellent opportunity to minimize the administrative burden associated with such an exercise. By conducting a simultaneous revision to the NSR permit, the permitting authority would be revising the "applicable NSR requirement for purposes of determining what must be included in the part 70 permit.

There are several factors which bound the available discretion of the permitting authority in deciding whether an NSR permit term is necessary and must be incorporated into the part 70 permit as a federally-enforceable condition. Certainly all NSR terms must be incorporated which are mandatory under EPA's governing regulations (e.g., best available control technology, lowest achievable emissions rate, and other applicable NSR emission limits), or are not mandatory under EPA regulations but are expressly required under the terms of the State's NSR program (e.g., new source performance standards (NSPS) and SIP emission limits, reporting and recordkeeping requirements<sup>3</sup>), or are voluntarily taken by the source to avoid an otherwise applicable requirement (e.g., emission limits used to create a "synthetic minor" source, to "net out" of major NSR, or to create tradeable offsets *or* other emission reduction credits).

On the other hand, other NSR permit terms and conditions may

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<sup>2</sup>In States, an NSR permit is subsequently converted to an operating permit leaving the preconstruction permit void. In other States, there is not a separate construction permit (i.e., single permit system). In either case the phrase "NSR permit" means the current permit in which the NSR applicable requirement reside.

<sup>3</sup>This does not preclude the possibility that certain federally-enforceable limits incorporated into the NSR permit qualify for generic treatment in the application and the permit as described in Section 4. Generic Grouping of Emissions Units and Activities.

be patently obsolete and no longer relevant to the operation of the source, such as terms regulating construction activity during the building or modification of the source, where the construction is long completed and the statute of limitations on construction-phase activities has run out. These terms no longer serve a Federal purpose and need not be included as terms of the part 70 permit. Likewise, the State Will also need to identify provisions from NSR permits that are not required under Federal law because they are unrelated to the purposes of the NSR program. Examples typically include odor limitations, and limitations on emissions of hazardous air pollutants where Such limitations do not reflect a section 112 standard or a SIP criteria pollutant requirement. Where the State retains such conditions, it would draft the part 70 permit to specify that they are State-only conditions and incorporate them into the part 70 permit as such.

New source review permits are also likely to contain other terms that are not patently obsolete or irrelevant, but that the source and permitting authority agree are nevertheless extraneous, out-dated, or otherwise environmentally insignificant and inappropriate for inclusion in a federally-enforceable permit. Candidates for this exclusion include: (1) information incorporated by reference from an application for a preconstruction permit (to the extent this information is needed to enforce NSR permit terms it should be converted to terms in the part 70 permit), or (2) original terms of a preconstruction permit that has been superseded by other terms related to operation. The propriety of excluding other types of NSR permit terms will need to be evaluated on a case-by-case basis.

The EPA believes that the above parallel processing approach should be effective in most situations to incorporate the federally significant NSR permit terms into the part 70 permit an efficient and workable way. However, the Agency recognizes that sources and permitting authorities may experience serious burden and timing concerns in accomplishing this process. Therefore, the Agency recommends the following approach, which EPA believes is consistent with the current part 70 role. Under this approach, sources may in their part 70 permit applications propose candidate terms from their current NSR permits which the reasonably believe should be considered for revision, deletion, or designation as being enforceable only by the State. Upon

submittal of the application, the source would, as a Federal matter, only need to certify compliance status for those remaining NSR terms that it had earmarked for incorporation into the part 70 permit as federally-enforceable terms. The permitting authority, as part of the collaborative part 70 permit issuance process, would review the list of terms recommended in good faith by the source for deletion, revision, or State-only status and would ultimately agree or disagree with the source proposal. Where the permitting authority decided that terms beyond those proposed as federally enforceable by the source should be retained to implement NSR, the source would be required to re-certify its application with respect to those NSR terms. Failure to do so within the timeframe required by the permitting authority would result in an inaccurate certification and the loss of the application shield.

The resolution of which NSR terms are to be incorporated should ideally be completed by the time of initial part 70 permit issuance. However, the resources available for timely issuance of thousands of part 70 permits may not be sufficient to achieve final resolution of NSR permit terms by permit issuance. Serious concerns have been raised by industry that they should not be subject to premature incorporation of these remaining permit terms into the part 70 permit. They believe that this could trigger, in many cases, inappropriate part 70 responsibilities (e.g., monitoring, reporting, and recordkeeping) for these terms.

The EPA believes that the current part 70 rule allows permitting authorities to address these concerns as well. Where States wish to extend the time in which to decide whether to revise, delete, or designate as State-only certain terms of current NSR permits, permitting authorities may stipulate in initial part 70 permits that any of those NSR terms so listed the permit will be reviewed and be deleted, revised, or incorporated as federally-enforceable terms of the Part 70 Permit on or before a specified deadline (not later than the renewal of the permit). Prior to the deadline, the permitting authority would delete, revise, or make federally enforceable any term that the State determined warranted such treatment. In the meantime, all other terms would continue to be enforceable under State law as terms of the NSR permit. The permitting authority would incorporate any NSR permit terms that were not deleted or designated as State-only into the federally enforceable portion

of the part 70 permit consistent with its approved part 70 permit revision procedures.

Finally the permitting authority may be revired to add new terms to the part 70 permit to make any incorporated NSR permit terms enforceable from a practical standpoint, to reflect operation rather than construction, or to meet other part 70 requirements regarding the content of permits. Where a permitting authority has already converted the NSR permit into an existing State operating permit before incorporation into the part 70 permit, the terms of the current permit to operate will presumptively define how NSR permit terms should be incorporated into part 70 permits.

#### 8. Section 112(r) Requirements

For sources otherwise required to obtain a part 70 permit, complete applications merely need to acknowledge (where appropriate) that the on-site storage and Processing of section 112(r) chemicals may require the source to submit a section 112(r) risk management plan (RMP) when that requirement becomes applicable. This acknowledgment should be based on the "List of Regulated Substances and Their Thresholds" rule [59 FR 4478 (January 14, 1994)]. Sources are not required to quantify emissions of these substances (unless they are also pollutants listed under section 112(b), and such quantification is needed for fee collection purposes). To resolve issues of applicability, permitting authorities may ask for additional information from certain sources regarding materials stored and transferred and the amounts of chemicals used in certain processes if the source does not-indicate its potential applicability with respect to the section 112(r) requirement to file an RMP.

#### 9. Research and Development Activities

The EPA expects that R&D activities will generally be exempt from part 70 and not be involved in the part 70 application process since they are typically independent, non-major sources. The July 1992 part 70 preamble provided general guidance explaining that R & D activities could often be regarded as separate "sources" from any operation with which it were co-located (57 FR 32264 and 32269). The Agency is clarifying and

confirming their substantial flexibility under the ongoing rulemaking action to revise part 70.

Some R&D activities can still be subject to part 70 because they are either individually major or a support facility making significant contributions to the product of a collocated major manufacturing facility. In addition, laboratory activities which involve environmental and quality assurance/quality control sample analysis, as well as R&D, present similar Permitting problems. Such activities should be eligible for classification as *an* insignificant activity if there are no applicable SIP requirements. where applicable SIP requirements do apply, the typically consist of "work practice" [e.g., good laboratory practice) requirements. In this situation, permit application would need to contain only statements acknowledging the applicability of, and certifying compliance With, these work practice requirements. There is no need for an extensive inventory of chemicals and activities or a detailed description of emissions from the R&D or laboratory activity. Similarly, there would be no need to monitor emissions as a part 70 per responsibility.

#### **10. Applications from Non-major Sources**

Applications for non-major sources subject to part 70 can less comprehensive than those for major sources. (Note that virtually all States have deferred the applicability of these sources as provided by part 70.) While permits for major source must include all applicable requirements for all emissions units at the source, §70.3(c)(2) stipulates that permits for non-major sources have to address only the requirements applicable emissions units that cause the source to be subject to part 70 (e.g., requirements of sections 111 or 112 of the Act applicable to non-major sources). Other emissions units at non-major sources that do not trigger part 70 applicability, even if the are subject to applicable requirements, do not have to be included in the permit. Since permits for non-major sources not have to include applicable requirements for emissions units that do not cause the source to be subject to part 70, no information on those units is needed in the permit application.

#### **11. Supporting Information**

The great majority of the detailed background information relied upon by the source to prepare the application need not be included in the application for it to be found complete. Even though certain emissions-related calculations [see § 70.5(c) (3) (viii)] are required, the application size can still be significantly reduced if the permitting authority allows the source to submit examples of calculations Performed that illustrate the methodology used. cost savings can be realized, even though the calculations are still performed, in that the efforts to exhaustively record them in the application can be omitted.

The permitting authority can request additional, more detailed information needed to justify any questionable information or statement contained in the initial application or to write a comprehensive part 70 draft permit. Applications for permits which will establish a requirement uniquely found in the part 70 permit (such as an alternative reasonably available control technology (RACT) limit) would require more supporting information, including any required demonstration.

### C. Quality of Required Information

The quality of emissions estimates where they are needed in the part 70 permit application depends on the reasonable availability of the necessary information and on the extent to which they are relied upon by the permitting authority to resolve disputed questions of major source status, applicability of requirements, and/or compliance with applicable requirements. general, where estimates of emissions are necessary, reasonably available information may be used.

Generally, the emissions factors contained in EPA's publication AP-42 and other EPA documents may be used to make any necessary calculation of emissions. When an acceptable range of values is defined for a general type of source situation, permitting authorities have considerable discretion to define the appropriate emissions factor value within that range. States are most often better able to make Such decisions given their closer proximity to the particular source and its operation.

For purposes of certifying the truth and accuracy of the application, part 70 requires that emissions estimates be

expressed in terms consistent with the applicable requirement. This does not mean that only test data is acceptable. Rather, the source may rely on any data using the same units and averaging times as in the test method. New testing is not required and emission factors are presumed to be acceptable for emissions calculations, but more accurate data are preferred if they are readily available. Emissions factors provided by permitting authorities are also allowed where EPA emission factors are missing or State or industry values provide greater accuracy. The applicant may also use other estimation methods (materials balance, source test, or continuous emissions monitoring (CEM) data) when emission estimates produced through the use of emission factors are not appropriate.

In disputed cases, the source may propose the least costly alternative estimation method as long as it will produce acceptable data. Owners and operators may propose use of emissions estimation methods of their choosing to the permitting authority when the resulting data is more accurate than that obtained through the use of emissions factors. Sources are encouraged to contact the permitting authority to discuss the appropriate estimation techniques for a particular circumstance.

Emissions estimates when they are necessary for HAPs often become less precise below certain thresholds. The need for quantification or even estimation should therefore decrease the lower the levels are that are present. For example, VOC estimates based on manufacturer's safety data sheets may indicate that trace amounts of certain HAPs may be present. It is reasonable for the source to report these HAPs as present in trace amounts and not quantify them further or perform expensive testing procedures to collect more accurate data, unless the permitting authority requires otherwise. On the other hand, more precise estimates might be required to defend a position that voc source was below emissions cutoffs which subject it to a RACT requirement if the source appeared close to that threshold and its exact emissions level was in doubt.

#### **D. Phase-In of Details for Completeness Determinations**

Permitting authorities have considerable flexibility in processing the expected huge volume of permit applications so as to issue initial permits by the required deadline of 3 year



after program approval. The § 70.5(c) requirement that a permit application will be complete only if it addresses all the information required in this section must be interpreted in light of the July, 1992 preamble (which clarifies the § 70.5(c) requirement for completeness in terms of information needed by the permitting authority to begin processing of an application). Accordingly, the permitting authority may balance the need for information to support timely permit issuance pursuant to the schedule approved in the program against the workload associated with managing and updating as necessary the initially submitted information.

Sources must submit complete applications within 12 months of the effective date (i.e., 30 days after the Federal Register date where EPA approves the program) of a State Part 70 program or on whatever schedule for application submittal the State establishes in its approved program for its sources. Permitting authorities may also require application submittals prior to part 70 program approval under State authority, however, a failure to comply with any application deadline earlier than the effective date for the program cannot be considered a violation of the Act.

The current rule allows permitting authorities to implement a two-step process for application completeness, first determining an application to be administratively complete, then requiring application updates as needed to support draft permit preparation. For example, permitting authorities can initially find an application complete if it defines the applicable requirements, and major/minor source status; certifies compliance status with respect to all applicable requirements (subject to the limitation on this action provided for in Section H. Compliance Certification Issues); and allows the permitting authority to determine the approved permit issuance schedule. The application must also include a certification as to its truth, accuracy, and completeness. In any event, permitting authorities must award the application shield if the source submits a timely application which meets the criteria for completeness in § 70.5(c).

Under this approach, if the source has supplied at least initial information in all the areas required by the permit application form and has certified it appropriately, the

permitting authority generally has flexibility to judge the application to be complete enough to begin processing. Accordingly, there should normally be no need for an applicant to submit an application many days in advance in order to build in extra time for an iterative process before the relevant submittal deadline. Sources scheduled for permitting during the first year of the transition schedule must submit any additional information as needed to meet fully the requirements of § 70.5(c) for completeness on a more immediate schedule so that their permit can be issued within that first year.

#### **E. Updates to Initially Complete Applications Due to Change**

Sources, to maintain their application's status as complete and therefore preserve the application shield, must respond to requests from the permitting authority for additional information to determine or evaluate compliance with applicable requirements within the reasonable timeframe established by the permitting authority. Where more information is needed in the permit application to continue its processing, permitting authorities may opt *to* add the additional information to the application themselves or require additional submittals from the source. *Sources* must promptly certify any additional information submitted by them and certify or revise any relevant information furnished by the permitting authority.

##### **1. Changing Emissions Information**

Updates to the initially complete application may be required if emissions information, such as revised emissions factors, changes or additional NSR projects are approved after an application is submitted. The exact response required will depend in part on whether the change affects a source's applicable requirements or its compliance status and when it is discovered. If, after consultation with the permitting authority, it is determined that the applicability status of the source is affected by new emissions information (e.g., the change causes the source to become newly subject to applicable requirements or may affect its ability to comply with a Current NSR permit condition), then the source must promptly submit the new information to the permitting authority, identify any new requirements that apply, and certify any change in the source compliance status. The issuance of an NSR permit may also add a

new applicable requirement that would need to be addressed by the part 70 permit.

If the new information is discovered before the draft permit has been issued, it should be submitted as an addendum to the application, and the draft permit should reflect the new information. The permitting authority and a source can agree on set intervals at which such updating is required in order to structure the process and make it more efficient. If new information is discovered after the draft Permit has completed public review but before the proposed permit has been issued, the information should still be submitted, and it is the responsibility of the permitting authority to revise the permit accordingly.

If new information is discovered after the permit has been issued, the resulting change could, at the discretion of the permitting authority, be addressed as a permit revision or as a reopening. If the change would not allow a source to Comply with its current permit, the source should initiate a permit revision.

If the information does not affect applicability of, or compliance with, any applicable requirement (e.g., only alters the tpy emissions estimates of regulated pollutants), the information need not be submitted until permit renewal. If the permitting authority requires submittal of new information earlier, however, then it must be submitted according to reasonable deadlines established by the permitting authority.

## 2. Other Changes

Other changes can also occur that would require the source, even absent a specific request from the permitting authority, to propose an update to an initially complete application. One example is where a new regulatory requirement becomes applicable to the source before the permit is issued.

## **F: Content Streamlining**

### 1. Cross Referencing

The permitting authority may allow the application to cross-reference previously issued preconstruction and part 70 permits,

State or local rules and regulations, State laws, Federal rules and regulations, and other documents that affect the applicable requirements to which the source is subject, provided the referenced materials are currently applicable and available to the public. The accuracy of any description of such cross-referenced documents is subject to the certification requirement of part 70. such documents must be made available as part of the public docket on the permit action, unless they are published and/or are readily available (e.g., regulations printed in the Code of Federal Regulations or its State equivalent). In addition, materials that are available elsewhere within the same application can be cross referenced to another section of the application.

In many cases, incorporation of prior information from previously issued permits would be useful. Examples are where source is updating a part 70 permit by referencing the appropriate terms of a NSR permit or renewing a part 70 permit by referencing the current permit and certifying that no change in source operation or in the applicable requirements has occurred. Even where existing permit conditions are expressed in terminology other than that used in the part 70 permit, cross-referencing can still be possible. Such citations, however, would have to provide sufficient translations of terms to ensure the same effect.

As discussed previously, the permitting authority may determine that certain terms and conditions of existing NSR permits are obsolete, environmentally insignificant, or not germane with respect to their incorporation into part 70 permits. Even when a NSR permit contain such terms, citation can still be used to the extent that the NSR permit provisions appropriate for part 70 permit incorporation are clearly identified through the cross-reference. Also, the NSR permit terms not cited for part 70 incorporation are still in effect as a matter of State law unless and until expressly deleted by the permitting authority. Wherever this citation approach is used, the permitting authority should review all referenced terms to ensure they meet part 70 requirements for enforceability.

The EPA believes that one reason for the excessive length and cost of some Permit applications is that sources believe they are required to paraphrase or re-state in their entirety the

provisions of the Code of Federal Regulations (CFR) or other repositories of applicable requirements. Citations can be used to streamline how applicable retirements are described in an application and will also facilitate compliance by eliminating the possibility that part 70 permit terms will conflict with underlying substantive requirements. Indeed, many States have taken a citation-based approach as a way of streamlining applications and permits. Thus, a source could cite, rather than repeat in its application, the often extensive details of a particular applicable requirement (including current NSR permit terms), provided that the requirement is readily available and its manner of application to the source is not subject to interpretation. The citation must be clear with respect to limits and other requirements that apply to each subject emissions unit or activity. For example, a storage tank subject to subpart kb of the NSPS would cite that requirement in its application rather than re-typing the provisions of the CFR.

## **2. Incorporation of Part 70 Applications by Reference into Permits**

The EPA discourages the incorporation of entire application by reference into permits. The concern with incorporation of the application by reference into the permit on a wholesale basis is the confusion created as to the requirements that apply to the source and the unnecessary limits to operational flexibility that such an incorporation might cause.

If States do incorporate part 70 applications by reference in their entirety into part 70 permits, EPA will consider information in the application to be federally enforceable only to the extent it is needed to make other necessary terms and conditions enforceable from a practical standpoint. **Moreover**, EPA does not interpret part 70 to require permit revisions for changes in the other aspects of the application.

## **3. Changing Application Forms**

The EPA urges States to re-examine their permit application forms in light of their experience to date and the contents of this guidance. Although the revision of an application form requires a program revision when it impacts any portion of the form which was relied upon by EPA in approving the part 70

program for the State, such a revision can, in most cases, be accomplished through an exchange of letters with the appropriate EPA Regional Office. Changes made to implement this guidance can be effected immediately with implementing documents sent **to** the appropriate EPA Regional Office. Similarly, a State could notify the Regional Office in writing that the State intends to make completeness determinations based on completion of parts of the existing forms to avoid costly changes in computerized form systems that have already been developed. This is another way that a State can act quickly to streamline application requirements while minimizing its own administrative burdens.

#### **G. Responsible Official**

Part 70 provides that a "responsible official" must perform certain important functions. In general, responsible officials must certify the truth, accuracy, and completeness of all applications, forms, reports, and compliance certifications required to be submitted by the operating Permits program [§ 70.5(d)]. As an example, a responsible official must "certify the truth, accuracy, and completeness of all information submitted as part of a permit application [§ 70.5(a) (2)] and that the source is in compliance "with all applicable requirements" under the Act [§ 70.5(c) (9) (i)]. In addition, part 70 requires responsible officials to certify monitoring reports, which must be submitted every 6 months, and "prompt" reports of any deviations from permit requirements whenever they occur.

The definition of responsible official in § 70.2 identifies specific categories of officials that have the requisite authority to carry out the duties associated with that role. The definition provides in part that the following corporate officials may be a responsible official:

. . . a president, secretary, treasurer, or vice president or any other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit . . . . [emphasis added]

Similarly, for public agencies, the definition indicates the

following persons may be responsible officials:

. . . a principal executive officer or ranking elected official. For purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the Overall Operations of a principal geographic unit of the agency . . . . [emphasis added]

Concerns have been raised over the apparent narrowness of the current definition of responsible official. In the August 1994 Federal Register notice, EPA responded to those concerns related to acid rain by proposing a revision to the definition of responsible official to allow a person other than the designated representative to be the responsible official for activities not related to acid rain control at affected sources [59 FR 44527].

To respond to further concerns over the definition of responsible official as it applies to partnerships formed by corporations, or partnerships, or a combination of both, EPA confirms that the same categories of officials who can act as responsible officials for corporations can also act in that capacity for partnerships where they carry out responsibilities substantially similar to those in the same categories in corporations. Partnerships that are essentially unions of corporations in partnerships will normally have the same management needs as corporations and so will establish a management structure with categories of officials similar to those of most corporations. In these partnerships, the persons with the knowledge and authority to assure regulatory compliance are the officials of the partnership.

Interpreting the definition of responsible official as limiting the class of persons in partnerships that may be responsible officials to general partners would frustrate the intent of the definition because it would in many instances actually result in designating a person that is not in a position to adequately fulfill the role of a responsible official. For this reason, EPA believes it is reasonable for permitting authorities, in the case of partnerships composed of Corporation and/or partnerships, to allow for the same flexibility in designating a responsible official as would be the case for those corporations.

**H: Compliance Certification Issues**

To make the required compliance certification to accompany the initial part 70 permit applications, sources are required to review current major and minor NSR permits and other permits containing Federal requirements SIP's and other documents, and other Federal requirements in order to determine applicable requirements for emission Units. The EPA and/or the State permitting authority may request additional information concerning a source's emissions as part of the part 70 application process.

Companies are not federally required to reconsider previous applicability determinations as part of their inquiry in preparing part 70 permit applications. However, EPA expects companies to rectify past noncompliance as it is discovered. Companies remain subject to enforcement actions for any past noncompliance with requirements to obtain a permit or meet air pollution control obligations. In addition, the part 70 permit shield is not available for noncompliance with applicable requirements that occurred prior to or continues after submission of the application.



## ATTACHMENT A

### LIST OF ACTIVITIES THAT MAY BE TREATED AS "TRIVIAL"

The following types of activities and emissions units may be presumptively omitted from part 70 permit applications. Certain of these listed activities include qualifying statements intended to exclude many similar activities.

Combustion emissions from propulsion of mobile sources, except for vessel emissions from Outer Continental Shelf sources.

Air-conditioning units used for human comfort that do not have applicable requirements under title VI of the Act.

Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing/industrial or commercial process.

Non-commercial food preparation.

Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

Janitorial services and consumer use of janitorial products.

Internal combustion engines used for landscaping purposes.

Laundry activities, except for dry-cleaning and steam boilers.

Bathroom/toilet vent emissions.

Emergency (backup) electrical generators at residential locations.

Tobacco smoking rooms and areas.

Blacksmith forges.

Plant maintenance and upkeep activities (e.g., grounds-

keeping, general repairs, cleaning, painting, welding, welding plumbing, re-tarring roofs, installing insulation, and paving parking lots) Provided these activities conducted as part of a manufacturing process, are not related to the source's primary business activity, and not otherwise triggering a permit modification.<sup>1</sup>

Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating or de-greasing (solvent metal cleaning) activities, and not otherwise triggering a permit modification.

Portable electrical generators that can be moved by hand from one location to another<sup>2</sup>.

Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning or machining wood, metal or plastic.

Brazing, soldering and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of HAP metals.<sup>3</sup>

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<sup>1</sup>Cleaning and painting activities qualify if they are not subject to VOC or HAP control requirements. Asphalt batch plant owners/operators must still get a permit if otherwise required.

<sup>2</sup>"Moved by hand" means that it can be moved without the assistance of any motorized or non-motorized vehicle, conveyance or device.

<sup>3</sup>Brazing, soldering and welding equipment, and cutting torches related to manufacturing and construction activities that emit HAP metals are more appropriate for treatment as insignificant activities based on size or production level thresholds. Brazing, soldering, welding and cutting torches directly related to plant maintenance and upkeep and repair or maintenance shop activities that emit HAP metals are treated as trivial and listed separately in this appendix.

CO, lasers, used only on metals and other materials which do not emit HAP in the process.

Consumer use of paper trimmers/binders.

Electric or steam-heated" drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.

Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.

Laser trimmers using dust collection to prevent fugitive emissions.

Bench-scale laboratory equipment used for physical or chemical analysis, but not lab fume hoods or vents.<sup>5</sup>

Routine calibration and maintenance of laboratory equipment or other analytical instruments.

Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.

Hydraulic and hydrostatic testing equipment.

Environmental chambers not using hazardous air pollutant (HAP) gasses.

Shock chambers.

Humidity chambers.

Solar simulators.

Fugitive emission related to movement of passenger vehicle

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<sup>5</sup>Many lab fume hoods or vents might qualify for treatment as insignificant (depending on the applicable SIP) or be grouped together for purposes of description.

provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.

Process water filtration systems and demineralizes.

Demineralized water tanks and demineralizer vents.

Boiler water treatment operations, not including cooling towers.

Oxygen scavenging (de-aeration) of water.

Ozone generators.

Fire suppression systems.

Emergency road flares.

Steam vents and safety relief valves.

Steam leaks.

Steam cleaning operations.

Steam sterilizers.

## **APPENDIX B**

March 5, 1996

MEMORANDUM

SUBJECT: White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program

FROM: Lydia N. Wegman, Deputy Director /s/  
Office of Air Quality Planning and Standards (MD-10)

TO: Director, Office of Ecosystem Protection, Region I  
Director, Environmental Planning and Protection  
Division, Region II  
Director, Air, Radiation and Toxics Division,  
Region III  
Director, Air, Pesticides and Toxics Management  
Division, Region IV  
Director, Air and Radiation Division, Region V  
Director, Multimedia Planning and Permitting Division,  
Region VI  
Director, Air, RCRA and TSCA Division, Region VII  
Assistant Regional Administrator, Office of Pollution  
Prevention, State and Tribal Assistance, Region VIII  
Director, Air and Toxics Division, Region IX  
Director, Office of Air, Region X

Please find attached White Paper Number 2 for improved implementation of part 70 operating permits Programs. This guidance is intended to enable State and local agencies to take further steps to reduce the complexity and preparation costs of part 70 permit applications and of the part 70 permits themselves. It is intended to supplement, not obviate, the guidance provided in EPA's "White Paper for Streamlined Development of part 70 Permit Applications" (July 10, 1995). This guidance is consistent with and furthers the goals of the Presidential initiatives to streamline and reinvent government.

The attached guidance is divided into five sections as follows:

II. A. Streamlining Multiple Applicable Requirements On The Same Emissions Unit(s).

II. B. Development Of Applications And Permits For Outdated SIP Requirements.

II. C. Treatment Of Insignificant Emissions Units.

II. D. Use Of Major Source And Applicable Requirement Stipulation.

II. E. Referencing Of Existing Information In Part 70 Permit Applications And Permits.

Streamlining will lead to substantial reductions in permitting burdens and improved part 70 implementation by allowing for the first time multiple applicable emissions limits and work practices expressed in different forms and averaging times to be reduced to a single set of requirements (which can be an alternative to all those requirements being subsumed). It will also allow various monitoring, recordkeeping, and reporting requirements that are not critical to assuring compliance with the streamlined (most stringent) limit to be subsumed in the permit. Any such streamlining must provide that compliance with the streamlined limit would assure compliance with all applicable requirements. In addition, substantial reductions in burden are expected to result from the reduced confusion and cost where locally adopted rules differ from the EPA-approved State implementation plan, the streamlined treatment of insignificant emissions units, the use of stipulations by sources as to which regulations apply, and the cross referencing rather than repetition of certain existing information.

There is an immediate need for the implementation of this guidance. A large number of sources have filed complete part 70 applications, and increasing numbers of these submittals are being processed for permit issuance. I strongly encourage you to work with your States to effect near-term use of this guidance.

Substantial contributions to this White Paper have come from the California Title V implementation Working Group. I want to thank you and your staff for your support and Region IX in particular for their leadership and considerable efforts in developing and completing this paper. I invite your suggestions on what additional guidance is needed to improve further the initial implementation of title V. If you should have any questions regarding the attached guidance, please contact Michael Trutna at (919) 541-5345, Ginger Vagenas of Region IX at (415) 744-1252, or Roger Powell at (919) 541-5331.

Attachment

cc: M. Trutna (MD-12)  
G. Vagenas (Region IX)  
R. Powell (MD-12)  
.4. Schwartz (2344)

WHITE PAPER NUMBER 2 FOR IMPROVED IMPLEMENTATION  
OF THE PART70 OPERATING PERMITS PROGRAM

U.S. ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF AIR QUALITY PLANNING AND STANDARDS

March 5, 1996



Contacts: Michael A. Trutna (919) 541-5345  
Ginger Vagenas (415) 744-1252  
Roger Powell (919) 541-5331

## WHITE PAPER NUMBER 2 FOR IMPROVED IMPLEMENTATION OF THE PART 70 OPERATING PERMITS PROGRAM

March 5, 1996

### I. OVERVIEW.

This guidance is intended to enable State and local agencies to take further steps to reduce the complexity and preparation costs of part 70 permit applications and of the part 70 permits themselves and to remove unintended barriers and administrative costs. It is also intended to build on and expand the guidance provided in the Environmental Protection Agency's (EPA) "White Paper for Streamlined Development of Part 70 Permit Applications" (July 10, 1995). White Paper Number 2 supplements, not obviates, the first White Paper. Both papers should be consulted for guidance in improving the implementation of title V of the Clean Air Act (Act) (i.e., part 70 operating permits programs). In particular, White Paper Number 2 is designed to simplify the treatment of overlapping regulatory requirements and insignificant emissions units and to clarify the use of citations and incorporation by reference in the part 70 permitting process. This effort is consistent with and furthers the goals of the Presidential initiatives to streamline and reinvent government.

Substantial contributions to this White Paper have come from the California Title V Implementation Working Group (Working Group). The California Air Resources Board and several California air districts and industries which (together with EPA) make up the Working Group have decades of experience with operating permits. These operating permits programs are generally just one component of air programs that, in many districts, also include local emissions standards (often with associated recordkeeping and reporting requirements), monitoring requirements, inspections, source testing, and new source review (NSR). The EPA has found the insights and recommendations of the Working Group extremely useful in integrating these various requirements using the part 70 permitting process. While much of the guidance contained herein addresses situations arising in California, it is available for use nationwide.

This guidance is divided into five sections and two attachments which are generally summarized as follows (the reader is, however, referred to the applicable main sections of the guidance for more detailed information):

Section II. A. Streamlining Multiple Applicable Requirements On The Same Emissions Unit(s).

The EPA and States have developed different and often overlapping applicable requirements governing the same emissions units to serve the purposes of different air programs. As a result, emissions units at a stationary source may be subject to several parallel sets of requirements. This can result in some of the requirements being redundant and unnecessary as a practical matter, even though the requirements still legally apply to the source. In cases where compliance with a single set of requirements effectively assures compliance with all requirements, compliance with all elements of each of the overlapping requirements maybe unnecessary and could needlessly consume resources. For example, a source could be subject to overlapping standards that result in two or more different emissions limits for the same pollutant and two or more source monitoring requirements for instrumentation, recordkeeping, and reporting.

Today's guidance describes how a source may propose streamlining to distill or "streamline" multiple overlapping requirements into one set that will assure compliance with all requirements. According to the guidance, multiple emissions limits may be streamlined into one limit if that limit is at least as stringent as the most stringent limit. (Limitations that apply to the streamlining of acid rain requirements are described in the main section of this guidance.) If no one requirement is unambiguously more stringent than the others, the applicant may synthesize the conditions of all the applicable requirements into a single new permit term that will assure compliance with all requirements. The streamlined monitoring, recordkeeping, and reporting requirements would generally be those associated with the most stringent emissions limit, providing they would assure compliance to the same extent as any subsumed monitoring. Thus, monitoring, recordkeeping, or reporting to determine compliance with subsumed limits would not be required where the source implements the streamlined approach.

It is important to emphasize that while streamlining maybe initiated by either the applicant or the permitting authority, it can only be implemented where the permit applicant consents to its use.

## Section II. B. Development Of Applications And Permits For Outdated SIP Requirements.

Historically, long periods of time have been required to review and approve (or disapprove) SIP revisions. The EPA has undertaken a number of reforms to its SIP approval process and is continuing to make significant progress in reducing the amount of time required for taking action on SIP revisions. Despite the progress we have made to date, there are many local rules now pending EPA review and approval for inclusion in the SIP. The gap between the approved SIP and the State rules is of concern because States and local agencies enforce their current rules (which are usually more stringent than the approved SIP rules) and often, as a practical matter, no longer enforce the

superseded and outdated rules in the SIP. On the other hand, EPA only recognizes and can only enforce the SIP-approved rules. This situation can cause confusion and uncertainty because some sources are effectively subject to two different versions of the same rules. Part 70's application, certification, and permit content requirements highlight this longstanding concern.

The most problematic situation arising from the gap between the approved SIP and the State rules is where a technology-forcing rule that has been approved into the SIP is found by the State to be impossible to meet. Under these circumstances, the State would generally adopt a relaxation of this rule and submit it to EPA as a SIP revision. Until EPA is able to take action on the submitted relaxation, sources remain subject to a rule that is impossible to meet.

This section of the guidance largely addresses the problem by authorizing permitting authorities and their sources to base permit applications on State and local rules that have been submitted for SIP approval, rather than on the potentially obsolete approved SIP provisions that they would replace. Such reliance on pending State and local rules is proper when the permitting authority has concluded that the pending rule will probably be approved, or when the source believes it can show that the pending rule is more stringent than the rule it would replace. However, if the pending rule is not more stringent than the rule it would replace, the permit cannot be issued until the pending rule is approved.

#### Section II. C. Treatment Of insignificant Emissions Units.

This section provides for the streamlined treatment of generally applicable requirements that apply to "insignificant" emissions units (IEU'S). It is intended to address current concerns that resources will be unnecessarily consumed by matters of trivial environmental importance.

The guidance clarifies that the permitting authority has broad discretion to tailor the permit application and permit for small equipment and activities as long as compliance with Federal requirements is assured. For both the permit application and the permit, information on IEU's may be generically grouped and listed without emissions estimates, unless emissions estimates are needed for another purpose such as determining the amount of permit fees that are calculated using total source emissions. This approach would utilize standard permit conditions with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and its enforcement are clear.

The EPA also believes that for IEU's, a responsible official's initial compliance certification may be based on available information and the latest cycle of required information.

The guidance further provides that the permitting authority can use broad discretion in determining the nature of any required periodic monitoring. The EPA's policy on IEU's is based on the belief that these emissions points are typically associated with inconsequential environmental impacts.

#### Section II. D. Use Of Major Source And Applicable Requirement Stipulation.

There have been concerns expressed that extensive new emissions data would be needed to verify major source status or the applicability of Federal requirements. White Paper Number 2 clarifies that for applicability purposes, a source familiar to the permitting authority may simply stipulate in its application that it is major or that Federal requirements apply as specified in the application. The paper clarifies that there is no need to prepare and submit extensive information about the source that "proves" it is subject to any requirements that it stipulates are applicable. This does not affect the requirement to provide information that is otherwise required by part 70.

#### Section 11. E. Referencing Of Existing Information In Part 70 Permit Applications And Permits.

Concerns have been raised that a source must re-prepare and resubmit information that is readily available, or that the permitting authority already has, to complete part 70 permit applications. In addition, similar concerns have been voiced regarding the large and potentially unnecessary burden of developing permits which repeat rather than reference certain types of regulatory requirements that apply to the source (e.g., monitoring and testing protocols). The guidance clarifies that, in general, the permitting authority may allow information to be cited or cross-referenced in both permits and applications if the information is current and readily available to the permitting agency and to the public. The citations and references must be clear and unambiguous and be enforceable from a practical standpoint. After permits specify which emissions limits apply to identified emissions units, cross-referencing can be authorized for other requirements (e.g., monitoring, recordkeeping, and reporting).

Attachment A provides guidance on using the part 70 permit process to establish alternative test methods, while Attachment B provides example SIP language that could be used by both part 70 and non-part 70 sources to establish alternative requirements without the need for a prior source-specific SIP revision. This guidance should be particularly useful to those seeking

greater certainty or to establish alternative test methods to those now approved by EPA. [Note that Sections III. and beyond in Attachment B are currently in draft form.]

Streamlining will lead to substantial reductions in permitting burdens by allowing for the first time multiple applicable emissions limits and work practices expressed in different forms and averaging times to be reduced to a single set of requirements. It will also lower current burden levels by allowing various monitoring, recordkeeping, and reporting requirements that are not critical to assuring compliance with the streamlined (most stringent) limit to be subsumed in the permit. In addition, substantial reductions in burden are expected to result from the reduced confusion and cost where locally adopted rules differ from the EPA-approved SIP, the streamlined treatment of insignificant emissions units, and the use of stipulations and the cross-referencing rather than repetition of certain existing information in part 70 applications and permits.

The EPA believes that the guidance contained herein may be implemented by permitting authorities and sources without revisions to part 70 programs, unless a provision is specifically prohibited by State regulations. In some situations, EPA will be proceeding in parallel to issue clarifying rules. The EPA strongly encourages States to allow sources to take advantage of the streamlining opportunities provided in this guidance. The Agency also suggests the permitting authority develop information about permits issued with successful streamlining and make it available to other similar sources to help avoid repetitive costs.

Sources are advised to consult with their permitting authority to understand how the policies of this White Paper will be implemented. In several situations (particularly those where sources have already filed complete applications), permitting authorities may choose to propose streamlining options and, if mutually agreeable, work with the source to support a draft permit containing a streamlined limit. Where EPA is the permitting authority pursuant to part 71 regulations, the Agency will implement both White Papers to the extent possible and promote similar implementation where EPA delegates responsibility for the part 71 program to a State.

The policies set out in this paper are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party.

## II. ADDITIONAL GUIDANCE ON STREAMLINED DEVELOPMENT OF PART 70 PERMITS AND APPLICATIONS.

### A. Streamlining Multiple Applicable Requirements<sup>1</sup> On The Same Emissions Unit(s)?

<sup>1</sup>Title IV applicable requirements are an exception to this general rule. As set out in § 72.70(b). to the extent that any requirements of part 72 and part 78 are inconsistent with the (Footnote continued on next page)

## 1. Issue.

Can multiple redundant or conflicting requirements (emissions limits, monitoring, recordkeeping, reporting requirements) on the same emissions unit(s) be streamlined into a single set of understandable and enforceable permit conditions? May an applicant propose to minimize or consolidate applicable requirements? May a permitting authority develop such a proposal? How would a permit application with a streamlining proposal satisfy compliance certification requirements?

## 2. Guidance.

A source, at its option, may propose in its application to streamline multiple applicable requirements into a single set of permit terms and conditions.<sup>3</sup> The overall objective would be to determine the set of permit terms and conditions that will assure compliance with all applicable requirements for an emissions point or group of emissions points so as to eliminate redundant or conflicting requirements. Otherwise applicable requirements that are subsumed in the streamlined requirements could then be identified in a permit shield. The process would be carried out in conjunction with the submittal and review of a part 70 permit application, as an addendum to an application, or as an application for a significant revision to the part 70 permit

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requirements of part 70, part 72 and part 78 will take precedence and will govern the issuance, denial, revision, reopening, renewal, and appeal of the acid rain portion of an operating permit. The subsequent descriptions of streamlining therefore apply to requirements under parts 72 and 78 only to the extent that such requirements are, at the option of the applicant, used as streamlining requirements because they are the most stringent applicable requirements.

‘Emissions unit(s) means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant (as defined in section 70.2) or any pollutant listed under section 112(b) of the Act. It is used in this paper to include specifically a grouping of emissions units at a stationary source that shares the same applicable requirement and compliance demonstration method for a given pollutant.

‘The EPA recognizes that the described streamlining process may not be allowed by all State regulations or be warranted or desired for all applicable requirements. Similarly, partial streamlining (i.e., the streamlining of some, but not all, applicable requirements that apply to the same emissions units) may be most cost effective where difficult comparisons or correlations are needed for streamlining the other remaining applicable requirements. In addition, there is no barrier to more extensive streamlining occurring in the future.

(unless EPA in its revisions to part 70 authorizes permitting authorities to use a less extensive permit revision process). The EPA plans to revise part 70 to provide that the compliance certification required with initial application submittals may be based on the proposed streamlined applicable requirement where there is sufficient source compliance information on which to base such a certification.

The permitting authority, at its option, may evaluate multiple applicable requirements for a source category and predetermine an acceptable streamlining approach. Such evaluations should be made readily available to applicants. It is up to the applicant, however, to request in its application that such streamlined requirements be contained in the part 70 permit. Where streamlining would be of mutual interest, the permitting authority and the source could work together during the permit development stage to establish a basis for a streamlined limit prior to the issuance of a draft permit. This cooperative activity must result in a record consistent with this guidance which supports the draft permit containing the streamlined requirement. The approach might be particularly useful where a source has already submitted a complete part 70 permit application and the permitting authority does not want to require the source to submit a formal amendment to its application. Any streamlining demonstration must be promptly submitted to EPA upon its availability and in advance of draft permit issuance unless EPA has previously agreed with the permitting authority not to require it (e.g., the proposed streamlining is of a simple and/or familiar type with no new concerns).

In addition, general permits could be useful to allow the transfer of streamlined requirements from the first source to be covered by them to other similar sources or emissions units. The information development and review conducted as part of streamlining for an individual source can be used by the permitting authority to generate a general permit for similar sources or portions of sources. If a general permit were used, EPA and public review beyond that needed to issue the general permit would not be necessary when sources subsequently applied for the streamlined permit conditions established under the general permit. Even where a general permit is not issued, the availability of information obtained from the streamlining of one source may be useful as a model for future streamlining actions involving other similar sources.

Streamlined permit terms should be covered by a permit shield. The permit shield will result in an essential degree of certainty by providing that when the source complies with the streamlined requirement, the source will be considered to be in compliance with all of the applicable requirements subsumed under the streamlined requirement. Where the program does not now provide for a permit shield, the permit containing streamlined requirements should clarify this understanding (See section II.A.3. discussion). Permitting authorities without provisions for permit shields are encouraged to add a permit shield provision at the first opportunity, if they wish to realize fully the benefits of streamlining.



Sources that opt for the streamlining of applicable requirements must demonstrate the adequacy of their proposed streamlined requirements. The following principles should govern their streamlining demonstrations:

- a. The most stringent of multiple applicable emissions limitations for a specific regulated air pollutant on a particular emissions unit must be determined taking into account<sup>4,5</sup>:
  - o Emissions limitation formats (emissions limits in different forms must be converted to a common format and/or units of measure or a correlation established among different formats prior to comparisons);
  - o Effective dates of compliance (to the extent different);
  - o Transfer or collection efficiencies (to the extent relevant);
  - o Averaging times<sup>6</sup>; and
  - o Test methods prescribed in the applicable requirements<sup>7</sup>.

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<sup>4</sup>Applicable requirements mean those requirements recognized by EPA, as defined in § 70.2. State and local permitting authorities may modify, eliminate, or streamline "State-only" requirements based on existing State or local law and procedures.

<sup>5</sup>Sources may, in the interest of greater uniformity, opt to expand the scope of an applicable requirement to more emissions units so that the same requirements would apply over a larger section of the plant or its entirety, provided compliance with all applicable requirements is assured. Though a permit may through streamlining expand the scope of applicable requirements to include new emissions units, it may not change the basis on which compliance is determined (e.g., emissions unit by emissions unit, if that is the intent of the applicable requirement).

<sup>6</sup>While the streamlining of requirements with varying averaging times is viable under this policy, in no event can requirements which are specifically designed to address a particular health concern (including those with short term averaging times) be subsumed into a requirement which is any less protective.

The predominant case is expected to involve test methods which have been EPA approved either as part of the SIP or as part of a Federal section 111, or 112 standard. If a permitting authority is seeking to base a streamlined limit on an alternative or new test method relative to the ones already approved by EPA for the SIP or a section 111, or section 112 standard, some additional steps are needed to complete the proposed streamlining. As described in more detail (Footnote continued on next page)

Limitations for specific pollutants can be subsumed by limitations on classes of pollutants providing the applicant can show that the streamlined limit will regulate the same set of pollutants to the same extent as the underlying applicable requirements. For example, a volatile organic compound (VOC) limitation could effectively subsume an organic hazardous air pollutant (HAP) limitation for a constituent such as hexane, provided the VOC limit is at least as stringent as the hexane limitation. Where a single VOC limit subsumes multiple HAP limits, the permit must be written to assure that each of the subsumed limits will not be exceeded. However, a limit for a single or limited number of compounds cannot be used to subsume a limit for a broader class (e.g., a hexane limit for a VOC limit) because this would effectively deregulate any of the class that are not covered by the more limited group.

b. Work practice requirements must be treated as follows:

o Supporting An Emissions Limit. A work practice requirement directly supporting an emissions limit (i.e., applying to the same emissions point(s) covered by the emissions limit) is considered inseparable from the emissions limit for the purposes of streamlining emissions limits. The proposed streamlined emissions limit must include its directly supporting work practices, but need not include any work practice standards that are associated with and directly support the subsumed limit(s);

o Not Supporting An Emissions Limit. Similar work practice requirements which apply to the same emissions or emissions point but which do not directly support an emissions limit may be streamlined (e.g., different leak detection and repair (LDAR<sup>8</sup>) programs). The streamlined work practice requirement may be

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in Attachment A, permitting authorities may only implement streamlining which involves alternative or new test methods within the flexibility granted by the SIP and any delegation of authority from EPA (where section 111/112 standards are involved). With respect to SIP requirements, the ability for a permitting authority to authorize use of a different test method depends on the governing language contained in the SIP. Attachment B contains example SIP language which provides a mechanism that can establish an alternative applicable requirement in such cases without the need for source specific SIP revisions.

<sup>8</sup>For LDAR programs, stringency comparisons likely will be based on the aggregate requirements of each LDAR program (screening levels, frequency of inspection, repair periods, etc.) and the resultant overall actual emissions reduction expected from the affected equipment. In cases where a convincing demonstration cannot be made based on existing information or the regulations themselves have not clearly defined the expected emissions reduction, verifying test (Footnote continued on next page)

composed of provisions/elements (e.g., frequency of inspection, recordkeeping) from one or more of the similar work practice requirements, provided that the resulting composite work practice requirement has the same base elements/provisions as the subsumed Work practice requirements (e.g. has a frequency of inspection or has recordkeeping if the subsumed Work practice requirements have these elements/provisions).

Multiple work practice requirements which apply to different emissions or emissions points cannot be streamlined.

c. Monitoring, reporting, and recordkeeping requirements should not be used to determine the relative stringency of the applicable requirements to which they are applicable.

d. Where the preceding guidance does not allow sufficient streamlining or where it is difficult to determine a single most stringent applicable emissions limit by comparing all the applicable emissions limits with each other, sources may perform any or all the following activities to justify additional or different streamlining:

- o Construct an alternative or hybrid emissions limit<sup>9</sup> that is at least as stringent as any applicable requirement;
- o Use a previously "State-only" requirement as the streamlined requirement when it is at least as stringent as any applicable Federal requirement it would subsume

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data may be required. Alternatively, the applicant, the permitting authority, and EPA can work together to devise a method consistent with the principles of EPA's "Protocol For Equipment Leak Emissions Estimation" (EPA-453/R-95-017, November 1995) for determining relative stringency. Where a demonstration of the relative stringency of LDAR programs as applied to the affected equipment is not feasible, sources may modify elements of a particular LDAR program to produce a program that clearly (i.e., without further analysis) assures compliance with the other applicable LDAR programs.

"Title V allows for the establishment of a streamlined requirement, provided that it assures compliance with all applicable requirements it subsumes. However, EPA recognizes that construction of such hybrid or alternative limits can be more complicated than the situation where the streamlined limit is one of the applicable emissions limits. Accordingly, sources and States may need more time to agree on acceptable demonstrations and may wish to defer such streamlining until after issuance of the initial part 70 permit.

(this requirement would then become a federally-enforceable condition in the part 70 permit);

- o Use a more accurate and precise test method than the one applicable (see footnote number 7) to eliminate doubt in the stringency determination or

- o Conduct detailed correlations to prove the relative stringency of each applicable requirement.

e. The monitoring, recordkeeping, and reporting requirements associated with the most stringent emissions requirement are presumed appropriate for use with the streamlined emissions limit, unless reliance on that monitoring would diminish the ability to assure compliance with the streamlined requirements.<sup>10</sup> To evaluate this presumption, compare whether the monitoring proposed would assure compliance with the streamlined limit to the same extent as would the monitoring applicable to each subsumed limit. If not, and if the monitoring associated with the subsumed limit is also relevant to and technically feasible for the streamlined limit, then monitoring associated with a subsumed limit (or other qualifying monitoring<sup>11</sup>) would be included in the permit.<sup>12</sup> The recordkeeping and reporting associated with the selected monitoring approach may be presumed to be appropriate for use with the streamlined limit

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<sup>10</sup>Quality assurance requirements pertaining to continuous monitoring” systems should be evaluated using the same approach.

<sup>11</sup>The applicant may propose alternative monitoring of equal rigor. Permitting authorities may only implement streamlining which involves alternative or new monitoring methods within the flexibility granted by the SIP and any delegation of authority from EPA (where section I I 1/112 standards are involved).

<sup>12</sup>Permitting authorities and sources should presume that existing monitoring equipment [such as continuous emissions monitors (CEMs)] required and/or currently employed at the source should be retained. A permitting authority or applicant would have the opportunity to demonstrate that retention of such monitoring equipment is inappropriate, such as when the monitoring equipment is no longer relevant or is technically infeasible (e.g., the source has switched to a closed loop process without emissions or the streamlined limit corresponds to levels too low for a monitor to measure, such as SO<sub>2</sub> emissions from a boiler firing pipeline quality natural gas.)

<sup>13</sup>There recordkeeping is the means of determining compliance (e.g., in the miscellaneous metal parts and products coating rules, the typical role of monitoring is fulfilled by (Footnote continued on next page)

f. Permitting authorities must include citations to any subsumed requirements in the permit's specification of the origin and authority of permit conditions. In addition, the part 70 permit must include any additional terms and conditions as necessary to assure compliance with the streamlined requirement. In all instances, the proposed permit terms and conditions must be enforceable as a practical matter.

### 3. Process.

Streamlining may be accomplished through an applicant proposing to streamline multiple requirements applicable to a source, the permitting authority developing streamlining options for sources or source categories that would be subsequently accepted at the election of permittees, or the applicant working in agreement with the permitting authority after filing an initial complete application. The first six of the following actions would be taken by the source or, as appropriate, by the permitting authority. The level of effort to complete these actions will depend on the relative complexity of the streamlining situation. The permitting authority would then perform steps seven and eight.

Step One - Provide a side-by-side comparison of all requirements included in the streamlining proposal that are currently applicable and effective for the specific emissions units of a source<sup>16</sup>. Distinguish between requirements which are emissions and/or work practice standards, and monitoring and compliance demonstration provisions.

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recordkeeping), the appropriate recordkeeping would be determined in the same manner described for monitoring.

"Where a standard includes recordkeeping associated with a limit in addition to recordkeeping linked to a monitoring device (e.g., a coating facility that has recordkeeping requirements pertaining to coating usage, as well as recordkeeping for monitoring associated with an add-on control), both types of recordkeeping must be incorporated into the permit.

<sup>15</sup>The result offers considerable potential to reduce the different reporting burdens associated with different applicable requirements well beyond what was previously available (e.g., synchronizing the required reporting cycles from different applicable requirements to coincide with the most stringent one beginning at the earliest required date). (See also Final General Provisions. § 63.10(a)(5), March 16, 1994.)

A future applicable requirement (e.g., MACT standard newly promulgated under section 112 with a compliance date 3 years in the future) may be determined to be the most stringent applicable requirement if compliance with it would assure compliance with less stringent but (Footnote continued on next page)

step Two - Determine the most stringent emissions and/or performance standard (or any hybrid or alternative limits as appropriate) consistent with the above streamlining principles and provide the documentation relied upon to make this determination. This process should be repeated for each emissions unit pollutant combination for which the applicant is proposing a streamlined requirement.

Step Three - Propose one set of permit terms and conditions (i.e., the streamlined requirements) to include the most stringent emission limitations and/or standards, appropriate monitoring and its associated recordkeeping and reporting (see section II.A.2.e.), and such other conditions as are necessary to assure compliance with all applicable requirements.

Step Four - Certify compliance (applicant only) with applicable requirements. The EPA is planning to revise its part 70 regulations to provide that a source may certify compliance with only the proposed streamlined limit. Until this is accomplished, EPA recommends that a source certifying compliance only with the streamlined limit indicate this in an attachment to the certification, so that it is clear that the certification is being made with respect to a set of terms and conditions that the source believes “assure compliance” with all applicable requirements. In any event, a source may only certify compliance with a streamlined limit if there is source compliance data on which to base such a certification. (Such data should be available where the streamlined requirement is itself an applicable requirement and may be available if the streamlined limit is an alternative limit, e.g., a previously State-only emissions limitation). If there is not, then certifications must instead be made relative to each of the applicable requirements judged to be less stringent and must be based on data otherwise required under them to make this point clear.

Step Five - Develop a compliance schedule to implement any new monitoring/compliance approach relevant to the streamlined limit if the source is unable

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currently applicable requirements. In such a case, the source may propose either a streamlined requirement based on immediate compliance with the future applicable requirement or it may opt for a phased approach where the permit would contain two separate time-sensitive requirements. Under the latter approach, one streamlined requirement addressing all currently applicable requirements would be defined to be effective until the future applicable requirement became effective. The permit would also contain a second streamlined requirement which also addressed the future applicable requirement and would become the new streamlined requirement after expiration of the first streamlined requirement.

to comply with it upon permit issuance. The recordkeeping, monitoring, and reporting requirements of the applicable requirements being subsumed would continue to apply in the permit (as would the requirement for the source to operate in compliance with each of its emissions limits) until the new streamlined compliance approach becomes operative.

Step Six - Indicate in the application submittal that streamlining of the listed applicable requirements under a permit shield (where available) is being proposed and propose the establishment of a permit shield which would state that compliance with the streamlined limit assures compliance with the listed applicable requirements. All emission and/or performance standards not subsumed by the streamlined requirements must be separately addressed in the part 70 permit application.

Step Seven - Evaluate the adequacy of the proposal and its supporting documentation. The EPA recommends that the permitting authority communicate its findings to the applicant and provide reasonable opportunity for the applicant to accept the findings or propose a resolution of the differences before issuance of a draft permit for public review. Where the permitting authority determines that the streamlining proposal is inadequate, the source, to retain its application shield, must expeditiously resolve any problems identified by the permitting authority or update its prior application based on the individual applicable requirements previously proposed for streamlining.

Step Eight - Note the use of this process in any required transmittal of a part 70 application, application summary, or revised application to EPA and include the streamlining demonstration and supporting documentation in the public record. When the source is required to provide a copy of the application (or summary) directly to EPA, it must note the proposed use of streamlining. A copy of the streamlining demonstration must be submitted promptly to EPA along with the required copy of the application or application summary (where a summary may be submitted to EPA in lieu of the entire part 70 permit application) unless EPA has previously agreed with the permitting authority not to require it (e.g., the proposed streamlining is of a simple and/or familiar type with no new concerns).

#### 4. Enforcement.

All terms and conditions of a part 70 permit are enforceable by EPA and citizens, unless certain terms are designated as being only State (or locally) enforceable. In addition, a source violating a streamlined emissions limitation in the part 70 permit may be subject to enforcement action for violation of one (or more) of the subsumed applicable emissions limits to the extent that a violation of the subsumed emissions limit(s) is documented.

Upon receiving a part 70 permit a source implementing the streamlined approach would not be subject to an EPA enforcement action for any failure to meet monitoring, recordkeeping, and reporting requirements that are subsumed within the streamlined requirement and specified under the permit shield. These requirements would no longer be independently enforceable once the permit has been issued, provided that the source attempts in good faith to implement the monitoring, recordkeeping, and reporting requirements specified in the permit.

If subsequently the permitting authority or EPA determines that the permit does not assure compliance with applicable requirements, the permit will be reopened and revised.

## 5. Discussion.

As sources subject to title V identify all applicable requirements for inclusion in part 70 permit applications, they may find that multiple applicable requirements affect the same pollutant or performance parameter for a particular emissions unit. Likewise, the requirements of federally-enforceable terms and conditions in preconstruction or operating permits may overlap with the requirements of other federally-enforceable rules and regulations.

In these instances, a source maybe in compliance with the overall emissions limit of each of the applicable requirements, but be required to comply with a multitude of redundant or conflicting monitoring, reporting, or recordkeeping requirements. For example, a source owner faced with two emissions hits for the same pollutant at a specific emissions point maybe required to install separate monitoring instrumentation and submit separate monitoring reports for each, even though one monitor can effectively assure compliance with both emissions limits. Furthermore, the recordkeeping and reporting associated with the unnecessary instrumentation may create an administrative burden for both the facility and the implementing agency without an associated gain in compliance assurance. Prior to title V there has been no federally-enforceable means to resolve this situation.

The EPA encourages permitting authorities to allow use by the permit applicant of the part 70 permit issuance process to streamline multiple applicable requirements to the extent the conditions of this policy can be met. In this way, the part 70 process with its procedural safeguards can be used to focus all concerned parties on providing for compliance with a single set of permit terms that assure compliance with multiple applicable requirements instead of maintaining the costs of multiple sets of controls, monitoring, recordkeeping, and reporting approaches.

The legal basis for streamlining multiple applicable requirements relies on section 504(a), which requires that title V permits contain emissions limits/standards and other terms as needed to assure compliance with applicable requirements. This section notably does not require repetition of all terms and conditions of an applicable requirement when another applicable



requirement or part 70 permit condition (i.e., streamlined requirement) could be fashioned to otherwise assure compliance with that applicable requirement.

Section 504(f) lends additional certainty to permit streamlining. It specifically provides that the permitting authority may authorize that compliance with the permit may be deemed to be compliance with the Act provided that the permit includes all applicable requirements. Thus, this section allows the permitting authority to issue a permit containing a shield which protects a source against a claim that it is violating any applicable requirements listed in the permit shield as being subsumed under the streamlined requirement, provided that the source meets the permit terms and conditions that implement the streamlined requirement.

Part 70 is also receptive to the issuance of streamlined permits. It contains parallel language to the statute for emissions limits and for permit shields in §§ 70.6(a)(1) and (f). Although language in § 70.6(a)(3) may appear to restrict streamlining by requiring that all “applicable” monitoring, recordkeeping, and reporting requirements be placed in the permit, EPA did not intend for these provisions to preclude streamlining. Instead, the Agency believes that the provisions should be consistent with the flexibility for streamlining provided in section 504(a) of the Act and in § 70.6(a)(1). To require otherwise would be anomalous and could frustrate legitimate streamlining efforts. The EPA intends to revise part 70 to reflect this understanding in a future rulemaking.

Streamlining may be limited in cases where an applicable requirement defines specific monitoring requirements as the exclusive means of compliance with an applicable emissions limit. Some interpret these cases to require that only one set of monitoring requirements may be used to determine compliance and that only these requirements may appear in the part 70 permit. The EPA believes instead that section 504(a) supersedes any need for such exclusive monitoring, but nonetheless recommends that States address any potential concerns by adopting certain SIP language in the future. States that choose to revise their existing SIPs to contain authorizing language to overcome any SIP exclusivity problems may use the example language in Attachment B. The EPA believes that similar flexibility should be provided to non-part 70 sources as well. To that end, Attachment B also provides a SIP process (currently in draft form) which would allow similar flexibility for non-part 70 sources.

With respect to NSR, States can process, in parallel with the part 70 permit issuance process, a revision to an existing NSR permit as necessary to resolve any exclusivity concerns within existing NSR permits (See first White Paper).

Currently the implementing regulations for section 112(1) at 40 CFR part 63, subpart E represent an additional constraint on the streamlining of applicable requirements in part 70 permits but only where a State or local agency has accepted a delegation of authority for a particular maximum achievable control technology (MACT) standard by virtue of its

commitment to replace the Federal section 112 emissions standard with the State's own standard or program during the part 70 permit issuance process and using the procedures established in the Subpart E rule at §63.94.. In §63.94, EPA has specified the criteria for approving such alternative limits and controls meet an otherwise applicable section 112 requirement. These criteria must be satisfied to ensure that, after a State accepts delegation under §63.94, any change to the Federal rule results in permit requirements that, among other things:

- o Reflect applicability criteria no less stringent than those in the otherwise applicable Federal standards or requirements;
- o Require levels of emissions control for each affected source and emissions point no less stringent than those contained in the Federal standards or requirements;
- o Require compliance and enforcement measures for each affected source and emissions point no less stringent than those in the Federal standards or requirements;
- o Express levels of control and compliance and enforcement measures in the same form and units of measure as the Federal standard or requirement for §63.94 program substitutions;
- o Assure compliance by each affected source no later than would be required by the Federal standard or requirement.

Thus, when a State or local agency, after receiving §63.94 delegation, seeks to replace a Federal section 112 emissions standard with requirements arising from its own air toxics standard or program (such as a toxics NSR program) during the part 70 permit issuance process, streamlining must take place by meeting both the criteria of §63.94 and, except where contradictory, the criteria of this guidance. However, because most States are planning to take straight delegation of Federal emissions standards through subpart E procedures that do not rely on the part 70 permit issuance process, the EPA believes that the subpart E criteria for streamlining applicable requirements Will be necessary only in a minority of instances. In the majority of cases, where a State takes delegation of a Federal standard (e.g., through straight delegation). the applicable section 112 requirements could be streamlined by following only the criteria outlined in section A.2., above. Where there are a large number of sources in the same category subject to a MACT standard for which the State has a regulation with equivalent requirements. EPA recommends that the State explore delegation options under §63.93 to best utilize available resources.

It should be noted that the current subpart E rule maybe subject to change as a result of pending litigation. Currently, EPA intends to revise the rule within the parameters of the Court's decision to allow greater flexibility for approving State air toxics standards and programs and to

minimize or remove (as appropriate) any constraint that subpart E might impose on the streamlining of applicable requirements in part 70 permits.

Finally, States are strongly encouraged to adopt regulatory provisions allowing permitting authorities to grant the permit shield where they cannot now do so. The permit shield is an effective means to clarify that for applicable requirements listed as subsumed under the streamlined requirements, compliance with the streamlined requirements is deemed to also be compliance with the subsumed requirements. Such an understanding is essential to support and defend the issuance of any permit which provides for the streamlined treatment of multiple applicable requirements.

If a permit shield is not available, a permittee can still be afforded significant enforcement protection by an explicit agency finding that in its judgment the streamlined permit term indeed provides for full compliance with all the permit limits that it subsumes. In such a case, it is imperative that the permit contain language that lists the applicable requirements being subsumed into the streamlined requirement and states that compliance with the streamlined requirement will be deemed compliance with the listed requirements.

## B. Development Of Applications And Permits For Outdated SIP Requirements.

### 1. Issue.

Can sources file part 70 permit applications on the basis of locally adopted rules pending EPA SIP approval rather than the current SIP requirements? Can sources certify their compliance status on the same basis? Under what circumstances can permitting authorities issue and/or later revise part 70 permits based on such locally adopted rules?

### 2. Guidance.

a. General. In the first White Paper (section II. B.6.), EPA described a mechanism for simplifying permits where a source is subject to both a State adopted rule that is pending SIP approval and the approved SIP version of that rule. Under that approach, the pending SIP requirements would be incorporated into the State-only portion of the permit and would become federally enforceable upon EPA approval of the SIP. The EPA believes that in most instances, the approach described in the first White Paper adequately addresses the described problem. In some areas (most notably California), however, a sizable backlog of pending SIP revisions exists, and a more far-reaching solution is needed. In today's guidance, therefore, another approach that may be used by EPA and permitting authorities to address this situation is described.

Under this new alternative, the permitting authority may allow that application completeness initially be based on locally adopted rules including those which would relax

current (i.e., federally-approved) SIP requirements, provided that (1) the local rule has been submitted to EPA as a SIP revision, and (2) the permitting authority reasonably believes that the local rule (not the current SIP rule) will be the basis for the part 70 permit.

Where the permitting authority or the source has demonstrated to EPA's satisfaction that the local rule is more stringent and therefore assures compliance with the current SIP for all subject sources, a permit application relying on the local rule may be deemed to be complete and a permit containing the requirements of the local rule rather than the current SIP could be issued for part 70 purposes. That is, consistent with section 504(a) of the Act, the part 70 permit need only contain emissions limits and other terms and conditions (i.e., the more stringent local rule) as needed to assure compliance with the applicable requirement (i.e., the current SIP regulation).

An EPA finding that a submitted rule assures compliance with the approved SIP rule would be a preliminary indication of EPA's belief that a part 70 permit incorporating the terms of the submitted rule would also assure compliance with the approved SIP. Such a finding would not equate to rulemaking, and so would not constitute a revision of the SIP. Therefore, a preliminary finding would not necessarily ensure that the proposed revision would ultimately be approved by EPA, nor would it protect a source from enforcement of the approved SIP.<sup>18</sup> Further, such a finding would not predetermine the outcome of the part 70 permit proceeding. Reviewers would have the ability to evaluate any proposed permit terms or conditions based on pending SIP revisions to determine whether the permit assures compliance with applicable requirements, i.e., the approved SIP. However, EPA believes that a finding of this nature should provide the source and the permitting authority sufficient assurance to proceed with the issuance of a permit that reflects the terms of the submitted local rule rather than the approved SIP. Note that a part 70 permit can be based on a local rule even if the local rule is subsequently disapproved by EPA for SIP purposes (e.g., measure is more stringent than the current SIP but fails to meet SIP requirements for reasonably available control technology and/or to make reasonable further progress), provided: (1) a permit based on the local rule would assure compliance with all applicable requirements (including the approved SIP); and (2) the permit meets all part 70 requirements.

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<sup>17</sup>Where resources allow and the situation calls for it. EPA will go on record with a letter to the permitting authority with a list of rules that it has preliminarily determined will assure compliance with the corresponding SIP approved rule.

<sup>18</sup>If a part 70 permit is issued based upon a pending SIP revision and a permit shield is incorporated in the permit, compliance with the permit would be deemed to be compliance with all applicable requirements. If EPA or the permitting authority later discovers that the permit terms do not assure compliance with all applicable requirements, including the applicable SIP, the permit would have to be reopened and revised.

Where the local rule submitted to EPA as a SIP revision represents a relaxation of the current SIP requirement (e.g., the local rule would replace an existing technology forcing rule that has been determined to be unachievable in practice), a part 70 source may propose in its permit application to base its permit on the local rule in anticipation of EPA approval. However, a permit based on the local rule could not be issued prior to EPA approval of the rule. This is because a permit based on the relaxed requirements of the local rule could not assure compliance with the more stringent applicable requirement (the approved SIP), as required by section 504 of the Act. Similarly, a part 70 source may be subject to pending SIP revisions that may tighten certain current SIP obligations and relax others for sources in that source category. Here again the permitting authority could allow initial application completeness to be determined relying on the locally adopted rule, but the permit could not be issued without the current SIP requirements unless a source opted to demonstrate that the submitted rule represents, for that specific source, a more stringent requirement than the current SIP. In such a case, the part 70 permit could subsequently be issued for that source on the basis of the local rule, since the permit terms would assure compliance with the approved SIP.

b. Initial actions by EPA and permitting authorities. The EPA is committed to working with States within available resources to assure that the timetable for overall permit issuance is not adversely affected by pending SIP revisions that are not straightforward tightening. The extent of the problem, however, will vary greatly and, in some cases, may require a specific plan of action between EPA and certain States to expedite SIP processing where the problem is substantial.

In California, where this problem is believed to be most extensive, EPA, the districts, and the California Air Resources Board are in the process of identifying rules in the SIP backlog that are not straightforward tightening or are relaxations of the currently approved SIP, and will target them for expeditious processing. These rules will be identified within a specified timeframe, generally within 1 year of the effective date of a district's part 70 program. The EPA's Region IX will enter into formal agreements with affected districts and will commit to take action on this "targeted" portion of the SIP backlog before comprehensive permit issuance for sources affected by the backlog would be required, provided this is consistent with the transition plan<sup>19</sup> (as it may be revised). Other EPA Regional Offices will determine the need and resources available for this type of exercise on a case-by-case basis. Region IX will also commit to process expeditiously any similar rules submitted or identified after the period of the formal agreement, although such processing would not necessarily occur before permits must be issued to sources affected by these rules.

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<sup>19</sup> Transition plan refers to the 3-year transition strategy for initial part 70 permit issuance described in § 70.4(b)(1).

Under Region IX's formal agreements, permitting authorities in the districts need not issue the portion of the part 70 permit covering emissions units affected by the targeted backlog until the rule adoption or change identified in the formal agreement has been acted on by EPA, consistent with the flexibility allowed in the permit issuance transition plan in the permitting authority's program. This should in most cases allow permitting authorities to delay issuing permits to sources to the extent they are affected by the targeted SIP backlog until EPA completes its review action on the pending SIP revisions. Where a transition plan contains a permit issuance schedule that would not allow postponing permit issuance until EPA has acted on the proposed SIP revisions, appropriate changes to the plan can still be made to defer permit issuance until EPA action on the targeted SIP backlog. Such changes would be made following the same approach described for changing application forms in EPA's first White Paper. Within these constraints, a permitting authority may allow for issuance of part 70 permits to the facility in phases such that permits covering those emissions units of the facility affected by the targeted SIP revision are issued later. This result is also consistent with the flexibility contained in §70.2 (see definition of "Part 70 permit") for the permitting authority to issue multiple permits to one part 70 source if it makes sense to do so. Alternatively, the permitting authority could issue the permit in its entirety based on the current SIP.

The EPA agrees that delays in permit issuance described above will not be cause for an EPA finding of failure by the permitting authority to adequately administer or enforce its part 70 program. Any initial permit issued under a phased approach (i.e., the first phase involves all emissions units unaffected by the SIP backlog targeted by EPA), however, does not shield the source from the enforceability of the requirements excluded in the first phase permit and the obligation to obtain permit conditions covering the excluded emissions units after EPA has acted on the relevant SIP rule backlog.

c. Ongoing actions. The preceding guidance should address the most significant problems associated with the development of part 70 permit applications and the subsequent issuance of part 70 permits that result from the existence of a SIP backlog. The EPA recognizes, however, that areas experiencing the most significant start-up problems with respect to pending SIP rules may well require an ongoing program to manage the potential SIP backlog so as to prevent significant problems of this nature from occurring in the future. In some situations it may be appropriate on a continuing basis for EPA to determine preliminarily whether a submitted rule can be listed as one which would assure compliance with the SIP rule it seeks to replace. This would enable the permitting authority to adjust its priorities for requiring application updates and for accomplishing permit issuance and revision.

For post application submittal, a source that has filed a complete application may opt to, or be required to, update its current application as a result of changes or pending changes to the

SIP. The likelihood of these changes occurring will vary from area to area and are most likely to affect sources scheduled later in the transition period for initial permit issuance. For example:

- o A local rule previously relied upon may be amended by the State or district.
- o Where a local rule that was previously listed in the formal agreement for expeditious SIP processing (because the rule is not a straightforward strengthening) is disapproved by EPA and the source has relied on that rule in preparing its application, the applicant must file an application update that either demonstrates that compliance with the local rule would assure compliance with the current SIP or demonstrates direct compliance with the current SIP.
- o The adoption and submission to EPA of a more stringent local rule after an applicant has filed its application may present anew and desired opportunity for streamlining. If so, the applicant could opt to file an application update to shift the compliance focus of its current application to the newly adopted local rule, which is pending SIP approval, provided it meets the streamlining criteria described in section II.A. above.

For post permit issuance, sources may also encounter changes to rule situations after initial permit issuance that could lead them to request a permit revision. For example, sources may propose a revision to an issued part 70 permit where a newly adopted local rule would present a desirable streamlining opportunity. The significant permit revision process would be required under the current part 70 to accomplish this change. Note that EPA in its revisions to part 70 may authorize permitting authorities to use a less extensive permit revision process.

To initiate the permit revision, the source must file an application to revise the permit to contain the requirements of local rule instead of the current SIP. This application must meet the previously defined and applicable streamlining criteria.

In response, the permitting authority may subsequently revise the permit based on the local rule in lieu of the current SIP where (1) the rule is listed by the EPA as one where compliance with it would assure compliance with the relevant portions of the current SIP, or (2) the applicant has provided a source specific demonstration consistent with the streamlining criteria in section II.A.2. that assures this result. A permit shield or similar permit condition should be issued for purposes of certainty. In the absence of a shield or similar permit condition, all aspects of the approved SIP remain enforceable, regardless of the source's compliance status with respect to the permit. The EPA encourages permitting authorities currently without provisions for incorporating permit shields to add them at their first opportunity.

### 3. Process.

a. Initial Applications. An applicant proposing to submit its part 70 permit application based on a local rule that has been submitted for EPA approval rather than the current SIP would take one of two courses of actions depending on the status of the local rule with EPA and or the permitting authority:

The first course of action would be appropriate for local rules that (1) have been previously demonstrated to EPA's satisfaction to be at least as stringent as the approved SIP rule so as to assure compliance with it for all subject sources, (2) are otherwise authorized by the permitting authority based on its judgement that such rules will likely be the basis for the part 70 permit (e.g. EPA approval of the rule is imminent), or (3) have been specifically identified in a formal agreement between the permitting authority and EPA for expedition SIP processing, i.e., the "targeted backlog." Rules listed in a formal agreement will typically involve local rules pending SIP approval which could represent full or partial relaxations of the current SIP. Where they choose to use this approach, the permitting authority and EPA will maintain an up-to-date list of local rules which meet any of these criteria.

In preparing initial part 70 permit applications with respect to such local rules the applicant:

Step One - Will indicate in its application that it has opted for this approach, list or cross-reference all requirements from applicable local rules that are eligible for this approach, and refer to the list maintained for this purpose by the permitting authority.

Step Two - Will identify in the permit application the current SIP requirements that the pending SIP revision would replace.

Step Three - May choose to certify compliance with the requirement(s) of the pending local rule in lieu of the current SIP if there is sufficient source compliance data on which to base such a certification. (The EPA is proposing to revise its part 70 regulations to provide that such a certification would meet the requirements of § 70.5(C)(10).)

Step Four - May propose that a permit shield would be in effect upon permit issuance. For those listed local rules which are recognized by EPA as being able to assure compliance with the current SIP rule, the applicant would indicate in the application that a permit shield (or alternatively, other similar language where authority for a permit shield is not available) is being proposed to be incorporated into the permit to confirm this understanding.

The second course of action would be appropriate where the criteria specified above have not been met for a particular rule and an applicant still wants to base its initial part 70 application on such local rules pending SIP approval. In this instance, the process would be essentially the



same but the source would have to demonstrate that compliance with the local rule would assure compliance with the current SIP (i.e., make an adequate demonstration consistent with the streamlining criteria described in section II.A.2. above.) and submit it with the permit application in step one. Again, if a part 70 permit application has already been submitted without streamlining but the source agrees to subsequently pursue this option, the permitting authority may work with the source to support streamlining requirements during the permit development process.

b. Initial Permit Issuance Process. After receiving a complete application, the permitting authority must note where the applicant has proposed use of the approaches described above in section II.B.3 .a. The note would be placed in the application summary, the application, or the revised application. Copies of the application summary, the application, or the revised application containing such proposals must be submitted promptly to EPA (unless EPA has agreed that the demonstration is of a type not required for advance submittal to EPA).

Where the rule is listed by EPA as one where compliance with it would assure compliance with the relevant portions of the current SIP, or the applicant has provided a source specific demonstration consistent with the streamlining outlined in section II.A.2., the permitting authority may proceed to issue the permit based on the local rule in lieu of the current SIP. A permit shield or similar permit condition which confirms this understanding Should be issued for purposes of certainty.

If an applicant chooses to demonstrate that a local rule assures compliance with the applicable SIP for all affected emissions units, the permitting authority will evaluate this proposal and any supporting documentation. Upon completion of this evaluation and prior to releasing a draft permit public notice, the permitting authority is advised to communicate any concerns to the applicant and provide reasonable opportunity for the applicant to accept the findings or propose a resolution of the differences. This may cause some revisions to the application as originally filed.

If the permitting authority or EPA are not satisfied that the local rule (as it applies to the applicant's facility) assures compliance with the applicable SIP rule, the applicant must revise its application to rely on the SIP rule. All required application updates must be submitted on or before the reasonable deadline required by the permitting authority for the source to maintain application shield.

Consistent with the flexibility allowed in the permit issuance transition plan (as it may be revised ), the permitting authority may delay issuance of those portions of a source's permit that are covered by a rule identified in a Region IX type formal agreement, which targets certain SIP rules for expeditious processing, until EPA has acted on the relevant rule(s). Alternatively, comprehensive permits may be issued to such a source prior the time that EPA has acted on

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the rule provided that they are based on the current SIP (unless the source has provided an adequate streamlining demonstration).

#### 4. Enforcement.

All terms and conditions of the part 70 permit are enforceable by EPA and by citizens. In addition, a source violating the emissions limitation in the part 70 permit is also subject to enforcement action for violation of the current SIP emissions limits if a violation of this limit can be documented.

Upon issuance of a part 70 permit based on the local rule, the permit terms and conditions implementing the local rule would become federally enforceable. A source would not be subject to an EPA enforcement action for any failure to meet monitoring, recordkeeping, and reporting requirements that are required under the currently approved SIP, if such an understanding has been specified in the permit. These requirements would no longer be independently enforceable, provided the source attempts in good faith to implement the monitoring, recordkeeping, and reporting approach required under the local rule.

If subsequently the permitting authority or EPA determines that the permit does not assure compliance with applicable requirements, the permit must be reopened and revised.

#### 5. Discussion.

Sources in California districts currently are subject to several locally adopted rules which are pending before EPA as proposed SIP revisions. The majority of these local rules have been determined by the districts to be more stringent than the SIP rules that they seek to replace, although some of these rules would relax the current SIP requirements for certain affected sources. In some cases, technology-forcing SIP rules have been found to be infeasible to achieve and, instead of seeking to enforce them, districts have adopted achievable local rules. Until the local rules are approved into the SIP, sources are subject to both the local rule and the federally-approved version of the rule.

The resulting “outdated SIP” presents special problems to sources which must file a part 70 permit application. In particular, questions arise as to whether sources must complete their applications and certify compliance based on SIP rules which have been superseded by more stringent local rules or by rules that have been relaxed where, for example, the permitting authority has found the current SIP rules to be unachievable. Those problems, while most apparent in their effect on the start-up of a part 70 program, are also ongoing in nature and may create a need to update initially complete permit applications and to revise issued permits. The EPA believes that these problems with outdated SIP rules are most extensive in California but are not unique to that State.

The EPA strongly believes that implementation of title V to the extent possible should complement, not complicate, the implementation of other titles, including title I. the purpose of which is to assure adoption of programs that will attain and maintain the national ambient air quality standards (NAAQS).<sup>20</sup> Accordingly, the Agency is providing this guidance which will allow sources and permitting authorities to rely on more stringent local rules for permit issuance. The overall strategy for sensitizing the SIP revision process to part 70 concerns presented in this guidance will allow sources to focus more on current air quality requirements in all aspects of part 70 permit application development and update, permit issuance, and permit revision.

The legal basis for recognizing a local rule pending SIP approval in lieu of the current, but less stringent, SIP requirement or for streamlining multiple applicable requirements is identical to the basis for adopting a streamlined emissions limit to replace multiple applicable requirements (see discussion in section 11. A.5.). The opportunities for shifting to the more stringent local rule are correspondingly affected by the limitations previously described for the streamlining of applicable requirements.

### C. Treatment Of Insignificant Emissions Units.

#### 1. Issue.

How must sources address insignificant emissions units (IEU'S) subject to at least one applicable requirement?<sup>21</sup> (Insignificant emissions units are in most cases not directly regulated, and therefore could be left off the permit entirely, were it not for the presence of certain generic or facility-wide requirements that apply to all emissions units.) Must the application and the subsequent permit address each IEU individually and require periodic monitoring where it is not otherwise provided by a generically applicable requirement? On what basis can the initial and future compliance certifications be made for IEU'S with generally applicable requirements?

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This guidance is designed primarily to alleviate situations where the SIP backlog is both large and longstanding. It is not to be used as a means of anticipating the outcome of pending attainment status redesignations.

An emissions unit can be an IEU for one applicable requirement and not for another. However, such a unit may be eligible for treatment as an IEU only with respect to those pollutants not emitted in significant amounts. The term "significant" as used in this policy statement does not have the meaning as used in § 52.21 (e.g., 15 tpy PM-10, 40 tpy VOC) but rather means that the emissions unit does not qualify for treatment in the application as an insignificant emissions unit.

## 2. Guidance.

The EPA interprets part 70 to allow considerable discretion to the permitting authority in tailoring the amount and quality of information required in permit applications and permits as they relate to IEU'S. In general, permit applications must contain sufficient information to support the drafting of the part 70 permit (including certain information for IEU'S subject to only generally applicable requirements) and to determine compliance status with all applicable requirements. The EPA, however, interprets part 70 to allow permitting authorities considerable discretion as to the format and content of permits, provided that compliance with all applicable requirements, including those for IEU'S, is assured. The Agency believes that the clarifications contained herein afford permitting authorities sufficient flexibility to treat IEU's in a manner commensurate with the environmental benefits that may be gained from their inclusion in the permit.

a. Permit Applications - Information With regard to part 70 requirements to describe and list IEU'S in applications and permits, the permitting authority can use the generic grouping approach for emissions units and activities as discussed in the first White Paper. In addition, the requirement to identify all applicable requirements, as it related to IEU'S subject to generally applicable requirements, can normally be addressed by standard or generic permit conditions with minimal or no reference to any specific emissions unit or activity. The EPA has reviewed and acquiesced in the issuance of permits wherein generally applicable requirements are incorporated through the use of tables describing a tiered compliance regime for these requirements as they affect different sizes of emissions units, including a distinct and more streamlined compliance regime for IEU'S. Different generic permit tables may be necessary to cover the situation for a particular type of IEU which is governed by different applicable requirements. Similarly, the first White Paper provides that no emissions estimates need be provided for even regulated emissions streams where it would serve no useful purpose to do so. This should be the case for IEU'S where the amount of emissions from a unit is not relevant to determining applicability of, or compliance with, the requirement. Except where the contributions of IEU's would need to be more precisely known to resolve issues of applicability or major source status would the permitting authority need to request emissions estimates for part 70 purposes.

b. Permit Applications - Initial Compliance Certifications. Section 70.5(c)(9) requires complete part 70 applications to contain a certification of compliance with all applicable requirements by a responsible official and a statement of the methods used for determining compliance. This certification must be based on a "reasonable inquiry" by the responsible official. The EPA believes that, for the generally applicable or facility-wide requirements applying to an IEU. reasonable inquiry for initial certifications need only be based on available information. which would include any information required to be generated by the applicable requirement. Regarding the latter, and as is true for any applicable requirement, the initial

certification can be based on only the latest cycle of required information (e.g., a source could generally rely on a demonstration of compliance resulting from the most recent required monitoring, notwithstanding the existence of prior monitoring indicating non-compliance at a previous point in time). Where an applicable requirement (generally applicable or otherwise) does not require monitoring, the § 70.5(c)(9) requirement to certify compliance does not itself require that monitoring be done to support a certification. Similarly, there is no need to perform an emissions test to support this compliance certification if none is required by the applicable requirement itself. The EPA interprets § 70.5(c)(9) to allow for a certification of compliance where there is no required monitoring and, despite a “reasonable inquiry” to uncover other existing information, the responsible official has no information to the contrary.

c. Permit Content-Applicable Requirements With regard to part 70 obligations to include all applicable requirements in the permit the permitting authority can also use the generic grouping approach for emissions units and activities as discussed in the first White Paper. That is, generally applicable requirements can normally be adequately addressed in the part 70 permit by standard permit conditions with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and the manner of its enforcement are clear. As noted above, different generic permit provisions may be necessary to cover the situation for which different types of IEU’S are governed by different applicable requirements.

d. Permit Content - Monitoring Recordkeeping, and Reporting. Section 70.6(a)(3)(i) requires all applicable requirements for monitoring and analysis procedures or test methods to be contained in part 70 permits. In addition, where the applicable requirement does not require periodic testing or monitoring (which may consist of recordkeeping designed to serve as monitoring), the permitting authority must prescribe periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit. Many of the generically applicable requirements for IEU’S have a related test method, but relatively few have a specific regimen of required periodic testing or monitoring.

The EPA believes that the permitting authority in general has broad discretion in determining the nature of any required periodic monitoring. The need for this discretion is particularly evident in the case of generally applicable requirements, which tend to cover IEU’S as well as significant emissions units. The requirement to include in a permit testing, monitoring, recordkeeping, reporting, and compliance certification sufficient to assure compliance does not require the permit to impose the same level of rigor with respect to all emissions units and applicable requirement situations. It does not require extensive testing or monitoring to assure compliance with the applicable requirements for emissions units that do not have significant potential to violate emissions limitations or other requirements under normal operating conditions. In particular, where the establishment of a regular program of monitoring would not significantly enhance the ability of the permit to assure compliance with the applicable

requirement, the permitting authority can provide that the status quo (i.e., no monitoring) will meet § 70.6(a)(3)(i). For IEU'S subject to a generally applicable requirement for which the permitting authority believes monitoring is needed, a streamlined approach to periodic monitoring, such as an inspection program to assure the proper operation and maintenance of emissions activities (e.g., valves and flanges), should presumptively be appropriate.

The EPA's policy on IEU monitoring needs is based on its belief that IEU'S typically are associated with inconsequential environmental impacts and present little potential for violations of generically applicable requirements, and so may be good candidates for a very streamlined approach to periodic monitoring. As EPA noted in the first White Paper, generally applicable requirements typically reside in the SIP. Permitting authorities therefore not only have the best sense of which requirements qualify as generally applicable, but also where it is appropriate to conclude that periodic monitoring is not necessary for IEU'S subject to these requirements. Where the source ascertains that the permitting authority WM not require periodic monitoring for IEU'S, it can of course omit a periodic monitoring proposal from the application.

e. ~~Permit Content - Compliance Certifications~~. Section 70.6(c)(5) requires in part that each permitted source submit no less frequently than annually a certification of its compliance status with all the terms and conditions of the permit. This certification will be based on available information, including monitoring and or other compliance terms required in the permit. Where a particular emissions unit presents little or no potential for violation of a certain applicable requirement, the "reasonable inquiry" required by title V can be abbreviated. Since it can be determined in the abstract that violation of the requirement by these emissions units is highly improbable, it is reasonable in that instance to limit the search for information to what is readily available. As noted above, EPA believes that an IEU subject to a generally applicable requirement typically presents little or no potential for violation of those requirements. It follows that where, for instance, a permit does not require monitoring for IEU'S subject to a generally applicable requirement, and there were no observed, documented, or known instances of non-compliance, an annual certification of compliance is presumptively appropriate. Similarly, where monitoring is required, an annual certification of compliance is also appropriate when no violations are monitored and there were no observed, documented. or known instances of non-compliance.

### 3. Discussion.

Many of the concerns expressed to EPA regarding the treatment of IEU's in the application and permit arise because IEU'S are in most cases not directly regulated, and therefore could be left off the permit entirely, were it not for the presence of certain generic requirements that apply to all emissions units. Though the focus of concern is the applicability of the generic requirements to IEU's. response *to* these concerns derive primarily from the flexibility that exists in part 70 for dealing with generically applicable requirements. In implementing this flexibility,

it may be appropriate for the permitting authority to further distinguish between units that have been designated as insignificant and those that have not. This is so because the relative size of a unit can be an important factor in deciding how to fashion permit terms even for a generically applicable requirement, and State-established IEU's normally define the smallest emissions points. However, EPA notes that, as a matter of part 70 interpretation, whether a unit has been designated as insignificant is not necessarily critical to its treatment in the part 70 permit.

Concerns have been expressed that addressing in part 70 permits the relatively trivial portion of emissions attributable to IEU's will consume a disproportionate share of the total resources available to issue part 70 permits. That is, according to their understanding of part 70, applicants and permitting authorities will expend greater resources than warranted to determine the specific applicability of requirements to IEU's, how compliance with them will be assured, and the basis on which the certification of compliance status of the source with respect to these IEU's would be made.

The EPA believes that the policy described for addressing generically applicable requirements in applications and permits as they apply to IEU's allows permitting authorities sufficient flexibility to streamline the required administrative effort commensurate to the environmental significance of the varying types of IEU situations. This should prevent the potentially high but unintended level of costs identified by certain sources and permitting authorities from occurring in the future with respect to IEU's.

#### D. Use Of Major Source And Applicable Requirement Stipulation.

##### 1. Issue.

When an applicant stipulates that it is a major source and subject to specific applicable requirements, how much, if any, additional information related to applicability is necessary in the part 70 permit application?

##### 2. Guidance.

If an applicant stipulates that it is a major source<sup>22</sup> and subject to specific applicable requirements, it need not provide additional information in its application to demonstrate applicability with respect to those requirements, provided that (1) the permitting authority has had previous review experience with a particular source (e.g., issued it a permit), or (2) otherwise has an adequate level of familiarity with the source's operation (e.g., current emissions inventory information). This does not affect the requirement to provide information for other purposes

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If an applicant stipulates it is a major source, it must list all pollutants for which it is major.

under part 70, such as to support a compliance certification or a request for a permit shield or to describe the emissions activities of its site (see first White Paper).

Accordingly, permitting authorities may allow the applicant to stipulate that

- o Its facility is a major source and subject to part 70 permitting, without providing any additional information for the applicability determination;
- o It is subject to specific applicable requirements, to be included in its part 70 permit, without providing additional information to establish applicability for stipulated requirements; or
- o It is subject to only portions of an applicable requirement and state that it is not subject to other portions. Such a stipulation must explicitly state which portion of the rule applies and which does not and an explanation must be provided for this conclusion.

Stipulation by a source to major source status or specific applicable requirements in a part 70 application does not preclude the permitting authority from requesting additional information from the applicant for establishing the applicability of non-stipulated requirements or for verifying a stipulation that certain requirements are not applicable.

### 3. Discussion.

In general, part 70 requires that applications contain information to the extent needed to determine major source status, to verify the applicability of part 70 or applicable requirements, and to compute a permit fee (as necessary). Section 70.5(c) requires the application to describe emissions of all regulated air pollutants for each emissions unit.

In the first White Paper, EPA indicated a substantial degree of discretion for permitting authorities in this area. It indicates that States may adopt different approaches to meet the minimum program requirements established by the part 70 regulations depending on local needs. In many instances, a qualitative description of emissions will satisfy this standard. However, the applicant may need to provide more detailed information for purposes other than determining applicability and to foster efficiency in the permitting program.

For the purpose of determining the applicability of part 70 or other specific requirements, the information required in an application should be streamlined for the mutual benefit of the applicant and the permitting authority. An applicant that stipulates it is a major source subject to part 70 and to other applicable requirements should not be required to provide any additional information to verify those facts in its part 70 application. However, the applicant must provide sufficient information to allow the permitting authority to impose the applicable requirement. In



addition, the resulting application streamlining would not relieve the applicant from submitting, or the permitting authority from reviewing, emissions or other data for part 70 purposes other than determining applicability.

In the case where there is no dispute that a stationary source is subject to part 70, and the applicant stipulates that the source is a part 70 source in the application, no further information would be required for applicability determination. An example would be a source which is currently operating under a prevention of significant deterioration permit because it is major for PM-10. Both the source and the permitting authority agree that the source is subject to the State's part 70 program.

A source may also streamline the part 70 permit process by stipulating that specific applicable requirements apply. This does not relieve the source of its obligation to identify all applicable requirements or preclude the permitting authority from requesting additional information, including information pertaining to the applicability of requirements not covered in the stipulation. For example, a stationary source may stipulate it is subject to a SIP rule. However, the permitting authority may suspect that the source is also subject to a New Source Performance Standard (NSPS), but may need more information for confirmation. In this case, the permitting authority would request additional information related to the applicability of the NSPS.

Similarly, an applicant may stipulate that it is subject to only portions of an applicable requirement and state that it is not subject to other portions. In such case, the permitting authority may request the applicant to provide additional information to demonstrate that it is not subject to requirements in question. However, if a source requests a permit shield, additional information to demonstrate the non-applicability of these requirements must be submitted.

#### E. Referencing Of Existing Information In Part 70 Permit Applications And Permits.

##### 1. Issue.

Can an applicant in its permit application, and can the permit itself, reference existing information that is available at the permitting authority? Also, can the permit application and the permit reference applicable requirements through citation rather than by a complete reprinting of the requirements themselves in the part 70 permit application or permit?

##### 2. Guidance.

a. General. Information that would be cited or cross referenced in the permit application and incorporated by reference into the issued permit must first be currently applicable and

available to the permitting authority and public<sup>23</sup>. The information need not be restated in the part 70 application. Standardized citation formats should be established by the permitting authority to facilitate appropriate use of this mechanism.

Referenced documents must also be specifically identified. Descriptive information such as the title or number of the document and the date of the document must be included so that there is no ambiguity as to which version of which document is being referenced. Citations, cross references, and incorporations by reference must be detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation. Where only a portion of the referenced document applies, applications and permits must specify the relevant section of the document. Any information cited, cross referenced, or incorporated by reference must be accompanied by a description or identification of the current activities, requirements, or equipment for which the information is referenced.

b. Permit Applications. The applicant and the permitting authority should work together to determine the extent to which part 70 permit applications may cross reference agency-issued rules, regulations, permits, and published protocols, and existing information generated by the applicant. To facilitate referencing existing information, permitting authorities should identify the general types of information available for this purpose. To the extent that such information exists and is readily available to the public, the following types of information may be cited or cross referenced (as allowed by the permitting authority)<sup>24</sup>:

- o Rules, regulations, and published protocols.
- o Criteria pollutant and HAP emission inventories and supporting calculations.
- o Emission monitoring reports, compliance reports, and source tests.
- o Annual emissions statements.
- o Process and abatement equipment lists and descriptions.

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“Referenced documents must be made available(1) as part of the public docket on the permit action or (2) as information available in publicly accessible files located at the permitting authority. unless they are published or are readily available (e.g., regulations printed in the Code of Federal Regulations or its State equivalent).

“Use of cross-referencing does not shift any burden of reproducing or otherwise acquiring information to the permitting authority.

- o Current operating and preconstruction permit terms.
- 0 Permit application materials previously submitted.
- 0 Other materials with the approval of the permitting authority.

Applicants are obligated to correct and supplement inaccurate or incomplete permitting authority records relied upon for the purposes of part 70 permit applications. The responsible official must certify, consistent with § 70.5(d), to the truth, accuracy, and completeness of all information referenced.

c. Permits Incorporation by reference in permits may be appropriate and useful under several circumstances. Appropriate use of incorporation by reference in permits includes referencing of test method procedures, inspection and maintenance plans, and calculation methods for determining compliance. One of the key objectives Congress hoped to achieve in creating title V, however, was the issuance of comprehensive permits that clarify how sources must comply with applicable requirements. Permitting authorities should therefore balance the streamlining benefits achieved through use of incorporation by reference with the need to issue comprehensive, unambiguous permits useful to all affected parties, including those engaged in field inspections.

Permitting authorities may, after listing all applicable emissions limits for all applicable emissions units in the part 70 permit, provide for referencing the details of those limits, rather than reprinting them in permits to the extent that (1) applicability issues and compliance obligations are clear, and (2) the permit includes any additional terms and conditions sufficient to assure compliance with all applicable requirements<sup>25</sup>.

Where the cited applicable requirement provides for different and independent{ compliance options (e.g., boilers subject to an NSPS promulgated under section 111 may comply by use of low sulfur fuel or through add-on of a control device), the permitting authority generally should require that the part 70 permit contain (or incorporate by reference) the specific option(s) selected by the source. Alternatively, the permit could incorporate by reference the entire applicable requirement provided that (1) such reference is unambiguous in its applicability and requirements, (2) the permit contains obligations to certify compliance and report compliance monitoring data reflecting the chosen control approach, and (3) the permitting

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“In the case of a merged permit program, i.e.. where a State has merged its NSR and operating permits programs, previous NSR permits expire. This leaves the part 70 permit as the sole repository of the relevant prior *terms* and conditions of the NSR permit. Under these circumstances. it is not possible to incorporate by reference the expired NSR permits.

authority determines that the relevant purposes of title V would be met through such referencing. The alternative approach would not be allowable if changing from one Compliance option to another would trigger the need for a prior review by the permitting authority or EPA (e.g. NSR), unless prior approval is incorporated into the part 70 permit (i.e., advance NSR).

The EPA does not recommend that permitting authorities incorporate into part 70 permits certain other types of information such as the part 70 permit application (see first White paper).

### 3. Discussion.

Title V and part 70 do not define when citation or cross-referencing in permit applications would be appropriate, although it obviously would not be allowed where such citations or cross-references would not support subsequent development of the part 70 permit. The EPA's first White Paper states that a permitting authority may streamline part 70 applications by allowing the applicant to cross-reference a variety of documents including permits and Federal, State, and local rules. This guidance further provides that where an emissions estimate is needed for part 70 purposes but is otherwise available (e.g., recent submittal of emissions inventory) the permitting authority can allow the source to cross-reference this information for part 70 purposes.

Permitting authorities' files and databases often include information submitted by the applicant which can also be required by part 70. Development and review of part 70 permit applications could be streamlined if information already held by the permitting authority and the public is referenced or cited in part 70 permit applications rather than restated in its entirety. Similarly, specific citations to regulations that are unambiguous in their applicability and requirements as they apply to a particular source will reduce the burden associated with application development.

Incorporation by reference can be similarly effective in streamlining the content of part 70 permits. The potential benefits of permit development based on an incorporation by reference approach include reduced cost and administrative complexity, and continued compliance flexibility as enforceable allowed by the underlying applicable requirements.

Expectations for referencing with respect to permit content are somewhat better defined than for permit applications. Section 504(a) states that each permit "shall include enforceable emissions limitations and standards" and "such other conditions as are necessary to assure compliance with the applicable requirements." In addition, section 504(c) requires each permit to "set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." Analogous provisions are contained in §§ 70.6(a)(1) and (3). The EPA interprets these provisions to place limits on the type of information that may be referenced in permits. Although this material may be incorporated into

the permit by reference, that may only be done to the extent that its manner of application is clear.

Accordingly, after all applicable emissions limits are placed in the part 70 permit and attached to the emissions unit to which they apply, the permitting authority may allow referencing where it is specific enough to define how the applicable requirement applies and where using this approach assures compliance with all applicable requirements. This approach is a desirable option where the referenced material is unambiguous in how it applies to the permitted facility, and it provides for enforceability from a practical standpoint. On the other hand, it is generally not acceptable to use a combination of referencing certain provisions of an applicable requirement while paraphrasing other provisions of that same applicable requirement. Such a practice, particularly if coupled with a permit shield, could create dual requirements and potential confusion.

Even where the referenced requirement allows for compliance options, the permitting authority may issue the permit with incorporation of the applicable requirement provided that the compliance options of the source are enforceable defined under available control options, appropriate records are kept and reports made, and any required revisions to update the permit with respect to specific performance levels are made. This treatment would be analogous to the flexibility provided to sources through the use of alternative scenarios.

## Attachment A

### Approval of Alternative Test Methods

The part 63 general provisions, as well as other EPA air regulations implementing sections 111 and 112 of the Act, allow only EPA-approved test methods to implement emissions standards that are established by States to meet Federal requirements. Accordingly, streamlining cannot result in any requirement relying on a State-only test method unless and until EPA, or the permitting authority acting as EPA's delegated agency, approves it as an appropriate method for purposes of complying with that streamlined standard. Currently, all States may be delegated authority to make decisions regarding minor revisions to EPA approved test methods (i.e., minor changes are those that have isolated consequences, affect a single source, and do not affect the stringency of the emissions limitation or standard). The EPA is exploring options for defining where delegation to States is appropriate for reviewing major revisions or new test methods, and for expediting the approval process where the Agency retains final sign-off authority. The EPA recognizes that its approval must generally occur in a timeframe consistent with the time constraints of the part 70 permit issuance process. Until further guidance on this subject is issued, States must obtain EPA approval for all State-only test methods which represent major changes or alternatives to EPA-approved test methods prior to or within the 45-day EPA review period of the proposed permit seeking to streamline requirements.

With respect to SIP requirements, the ability for a permitting authority to authorize use of a different test method depends on the governing language contained in the SIP. For example, some SIP's expressly connect a test method with a particular emissions limit but allow for the use of an equally stringent method. Other SIP's contain a more exclusive linkage between an emissions limit and its required test method (i.e., limit A as measured by test method B). The SIP-approved test method can be changed only through a SIP revision unless the SIP contains provisions for establishing alternative test methods. Attachment B contains example SIP language which provides a mechanism that can establish an alternative applicable requirement in such cases without the need for a source-specific SIP revision.

Permitting authorities may implement streamlining which involves alternative or new test methods within the flexibility granted by the SIP and any delegation of authority granted by EPA (where section 111/112 standards are involved). Permit applications containing a request for a streamlined requirement based on an alternative or new test method must, to be complete, demonstrate that the alternative or new test method would determine compliance at the same or higher stringency as the otherwise applicable method. The EPA expects to receive expeditiously (i.e., well in advance of any draft permit issuance) those portions of an application dealing with a proposal for streamlining, including any demonstration of test method adequacy. Any required EPA approval of an alternative or new test method need not be obtained as a precondition for filing a complete application, but it must be secured before the final part 70 permit can be issued.

As mentioned previously, EPA intends to structure its approval process to comport reasonably with the timelines for part 70 permit issuance.

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## Attachment B

### SIP Provisions For Establishing Alternative Requirements

#### I. Overview.

States may revise their SIP's to provide for establishing equally stringent alternatives to specific requirements set forth in the SIP without the need for additional source-specific SIP revisions. To allow alternatives to the otherwise-applicable SIP requirements (i.e., emissions limitations, test methods, monitoring, and recordkeeping) the State would include language in SIP's to provide substantive criteria governing the State's exercise of the alternative requirement authority.

#### 11. Example Language For Part 70 Sources To Establish Alternative SIP Requirements.

The following is an example of enabling language that could be used to provide flexibility in the SIP for allowing alternative requirements to be established for part 70 sources.

In lieu of the requirements imposed pursuant to (reference specific applicable sections(s) or range of sections to be covered), a facility owner may comply with alternative requirements, provided the requirements are established pursuant to the part 70 permit issuance, renewal, or significant permit revision process and are consistent with the streamlining procedures and guidelines set forth in section H.A. of White Paper Number 2.

For sources subject to an approved part 70 program, an alternative requirement is approved for the source by EPA if it is incorporated in an issued part 70 permit to which EPA has not objected. Where the public comment period precedes the EPA review period, any public comments concerning the alternative shall be transmitted to EPA with the proposed permit. If the EPA and public comment periods run concurrently, public comments shall be transmitted to EPA no later than 5 working days after the end of the public comment period. The Director's [permitting authority's] determination of approval is not binding on EPA.

Noncompliance with any provision established by this rule constitutes a violation of this rule.

#### 111. Example Language For Non-Part 70 Sources To Establish Alternative SIP Requirements.



[NOTE: This section is a draft that EPA expects to finalize after appropriate revisions in the near future.]

For sources not subject to an approved part 70 program, the following is an example of enabling language that States may use to revise/submit SIP rules which would provide flexibility in the SIP for allowing alternative requirements to be established.

A. Procedures.

1. General. In lieu of the requirements imposed pursuant to [reference applicable sections] of this plan, a source owner may comply with an alternative requirement, provided that the Director approves it consistent with the procedures of this paragraph and the criteria of paragraph B.
2. State Review Procedure. The Director may establish an alternative requirement in [a review process defined by the State], provided that the requirements of this paragraph are met for EPA and public review and for notification and access are met. The Director's determination of approval is not binding on EPA.
3. Public Review. The Director shall subject any proposed alternative to adequate public review but may vary the procedures for, and the timing of, public review in light of the environmental significance of the action. For the following types of changes [add list of de minimis actions subject to EPA review], no public review shall be necessary for the approval of the alternative.
4. EPA Review. The Director shall submit any proposed alternative to the Administrator through the appropriate Regional Office, except for the following types of changes [add list of de minimis actions subject to EPA review] no EPA review shall be necessary for the approval of the alternative. Until the specific alternative SIP requirement has completed EPA review, the otherwise applicable SIP provisions will continue to apply.
5. Periodic Notification Public Access. For all actions taken by the State to establish an alternative requirement, the Director shall provide in a general manner for periodic notification to the public on at least a quarterly basis and for public access to the records regarding established alternatives and relevant supporting documentation.
6. Enforcement. Noncompliance with any alternative established by this provision constitutes a violation of this rule. The EPA and the public may challenge such an alternative limit on the basis that it does not meet the criteria contained in the SIP for establishing such an alternative: In addition, EPA and the public can take enforcement action against a source that fails to comply with an applicable alternative requirement.

## B. General Criteria for Evaluating Alternatives.

1. Applicability. The unit(s) to which the requirements apply must be specified in the underlying SIP and in the permit / alternative. If percentage reductions are required from the source, the baseline must be clearly set. The SIP must require the submission of all the information necessary to establish the baseline, and the alternative requirement must achieve the reduction called for in the SIP.

2. Time. The alternative must specify the effective date of the alternative requirement. The underlying requirement of the SIP shall remain in effect until the effective date of the alternative. The alternative must clearly specify any future-effective dates or any compliance schedules that apply to the source under regulations in effect at the time of issuance. For instance, a source may be due to comply with requirements promulgated before the permit / alternative was issued, but which are effective prior to the expiration of the permit/alternative.

3. Effect of changed conditions. If alternative emissions limitations or other requirements are allowed in the underlying SIP, the associated documentation with the changed conditions must clearly demonstrate the alternative requirement is no less stringent than the original SIP requirement.

4. Standard of conduct. The alternative proposal must clearly state what requirements the source must meet. For example, the SIP must specify the emissions limit and what alternatives are acceptable. The alternative proposal must contain limits, averaging times, test methods, etc., that are no less stringent and must address how they are no less stringent than the underlying SIP requirements. The alternative proposal must also show whether it applies on a per-source or per-line basis or is facility-wide.

5. Transfer Efficiency. Any SIP allowing alternative emissions limits and using transfer efficiency in determining compliance must explicitly state the circumstances under which a source may use improved transfer efficiency as a substitute for meeting the SIP limit. The improvement should be demonstrated through testing and an appropriate baseline and test method should be specified.<sup>26</sup> See draft "Guidelines for determining capture efficiencies" for criteria for evaluating alternative capture efficiency requirements.

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<sup>26</sup>Implied improvements noted by the NSPS auto coating transfer efficiency table cannot be accepted at face value.

**6. Average.** Both the SIP and the alternative proposal must explicitly contain the averaging time associated with each emissions limit (e.g., instantaneous, three hour average, daily, monthly, or longer). The time must be sufficient to protect the applicable NAAQS. The alternative proposal must demonstrate that the averaging time and the emissions limit in the alternative areas stringent as those in the original SIP requirements.

**7. Monitoring Recordkeeping.** The alternative proposal must state how the source will monitor compliance with the emissions requirement, and detail how the proposed method compares in accuracy, precision, and timeliness to the SIP-approved method. Records and monitoring data must be retained for at least the same period of time as required by the SIP. The method must enable compliance determinations consistent with the averaging time of the emissions standard.

**8. Test Methods** The alternative proposal must detail how the proposed test method in association with its particular emissions requirement (or rule) is at least as stringent as the approved method in association with its emissions limit (or rule) considering the accuracy, reliability, reproducibility, and timeliness of each test method taken in combination with its emissions limit. The application or proposal must also address how the change affects measurement sensitivity and representativeness, describe the need for the change, and indicate if the change is needed for unique conditions related only to the source in question. The method must enable a compliance determination consistent with the averaging time of the emissions standard associated with it.

**9. Act Requirements** The alternative must meet the all applicable Act requirements (e.g., for reasonably available control technology, 15% VOC reduction, etc.) and must not interfere with any requirements of the Act, including any regarding the SIP's attainment demonstration and requirements for reasonable further progress.

**10. Production Level.** The emissions are no greater than the SIP allowable emissions at the same production level. Pre-1990 production/operation scenarios cannot be used as part of any demonstration that the alternative requirements areas stringent as those in the SIP. Also, the demonstration must be performed using an EPA-approved test methods.

## **APPENDIX C**

**APPENDIX C**

**COMPARATIVE REQUIREMENTS FOR INCLUSION  
OF SHIPYARD PROCESSES  
IN TITLE V PERMIT APPLICATIONS**

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## **APPENDIX C**

### **COMPARATIVE REQUIREMENTS FOR INCLUSION OF SHIPYARD PROCESSES IN TITLE V PERMIT APPLICATIONS**

In the descriptions that follow, “trivial” indicates that the activity probably does not need to be included in the permit application. “Insignificant” means the activity must be checked off or listed in the permit application if the activity is present at the facility, but that little or no additional information is needed. The terminology used in state programs may vary.

Readers are cautioned that units and activities that are subject to a federally enforceable “applicable requirement” are not “trivial” or “insignificant” even if they would otherwise be so classified by EPA guidance or state Title V programs. Readers are also cautioned that rule language, permit application materials, other guidance, and actual permit agency expectations within any given state program may not correspond.<sup>1</sup>

For Maine and Connecticut, this information is based on state Part 70 programs that EPA has proposed to approve. For Virginia this information is based on a disapproved program that the State is likely to re submit. If Part 71 is applied in any of these states in the interim, the information in this appendix will be inapplicable during that interim period.

#### **STATE APPROACHES AND EMISSIONS THRESHOLDS**

Many state programs have emissions thresholds, based on actual emissions or potential to emit, below which a unit will be trivial or insignificant regardless of type, or above which a unit will lose its status as trivial or insignificant. When present, these rules typically override source-specific listings of trivial and insignificant activities. The San Francisco BAAQMD approach discussed below, is more complex.

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<sup>1</sup>For example, San Diego’s rule provides that all emissions points and emissions must be “described” in the permit application. Application materials require only a check-off of certain insignificant units; the implication is that other units defined as “insignificant” in the rule are actually “trivial” and need not be addressed in the permit. (That interpretation is applied in this appendix.) The San Diego APCD has also said that it will treat units identified as “trivial” in White Paper I (some of which are not even defined as “insignificant” in San Diego) as “trivial.” However, the APCD has subsequently issued permit application materials that are less generous than the White Paper. Similar discrepancies exist in other state programs. Permit applicants should discuss with their permit agency what the agency will actually require be included in a permit application. Cautious applicants may also want to discuss any discrepancies between program regulations and agency expectations with legal counsel.

### Alabama (Jefferson County)

Activities that are listed as trivial or insignificant lose that status if the potential to emit (“PTE”) of the activity exceeds 5 tons per year (“tpy” or “TPY”) for any pollutant, or 1,000 pounds per year for hazardous air pollutants (“HAPs”).

### Connecticut

No provisions.

### Georgia

Georgia’s listed “trivial” activities are based on EPA’s White Paper I list. Georgia has made “minor corrections and clarifications” to that list, some of which are reported here because of their potential usefulness in other jurisdictions.

In addition to listed insignificant activities, many of which involve emissions thresholds, an applicant may propose to treat as insignificant any unit within PTE of less than 5% of Title V major source thresholds that is not subject to a “specific” federal or state requirement; i.e., a requirement other than a generally applicable opacity, fugitive dust, PM or similar rule.

### Florida

Florida has a single list of “exempt” sources; if the exemption is based on size or production rate the source must be listed in the application and so is “insignificant.” Other exempt units are “trivial.” If certain PTE limits are exceeded for the facility as a whole, then all units with PTE above specified thresholds must be listed and emissions information provided. Facility PTE trigger levels areas follows: CO=50 tpy; PM<sub>10</sub>, SO<sub>2</sub>, NO<sub>x</sub>, or VOC = 5 tpy, lead = 500 pounds per year; any HAP = 8 tpy; all HAPs = 20 tpy. Unit thresholds areas follows: CO=10 tpy; PM<sub>10</sub>, SO<sub>2</sub>, NO<sub>x</sub> or VOC = 1 tpy; lead = 100 pounds per year; any HAP = 1 tpy.

### Louisiana

Units and activities that are not listed as insignificant by type can be treated as insignificant if PTE is <5 tpy for any pollutant, and toxic emissions are below limits set in Louisiana regulations and below §112(g) de minimis levels, and no permit conditions are needed to assure compliance with federal or state applicable requirements. These additional insignificant units must be approved in advance on a case-by-case basis.

### Maine

Maine lists both “trivial” and “insignificant” activities. In addition, processes with the potential to emit less than one ton per year of any single regulated pollutant and four tons per year total pollutants are “insignificant.” Any activity with the potential to emit HAPs at less than the de minimis emission level as defined in Section II of Appendix B to Chapter 140 of the Regulations of the Department of Environmental Protection, Bureau of Air Quality Control is also “insignificant.”



## Mississippi

There is an upper bound threshold for the trivial and insignificant categories, based on potential to emit, of one pound per hour of any pollutant or 0.1 pound per hour of any HAP. Any unit exceeding these thresholds must be identified in the permit application, and emissions must be quantified.

## San Diego

San Diego's regulations include a list of insignificant activities. The listed activities that do not condition insignificance on a size or production rate are "trivial" as defined in this appendix and need not be included in permit applications; listed activities that are conditional are "insignificant" as defined in this appendix and are included in a check-off form in permit application materials. In addition, district guidance provides that activities listed by EPA as "trivial" in the paper are "trivial" in San Diego. Note that San Diego's list of insignificant activities is based on a pre-existing list of activities that are exempt from permitting; that list has been extensively revised since it was included in Title V implementing regulations. Revised lists of trivial and "insignificant" activities are likely to be used for final program authorization.

In San Diego, most activities lose their status as "insignificant" or "trivial" and become "significant" if emissions of organic compounds or particulate matter exceed 100 pounds per day. A 5 pound per day limit applies to certain operations, e.g., batch-type solvent recovery stills, and to otherwise insignificant washing and drying activities.

## San Francisco / BAAQMD

An otherwise trivial or insignificant activity or unit is not trivial or insignificant if the activity or unit (when fugitives are included) emits more than two tons per year of any single pollutant, or 1000 pounds per year of any single HAP.

An activity or unit is "insignificant" if the activity or unit is "exempt" from permitting under Rule 2-1,<sup>2</sup> provided emissions are below these thresholds. A unit is also insignificant if it is not subject to specific substantive BAAQMD rules, provided actual emissions are less than 10 lbs per day of each non-HAP pollutant, or less than 150 pounds per year of each non-HAP pollutant. (Rule 2-1-103.)

An activity or unit is trivial only if it is "excluded" from all District regulations under Rule 1 (this is different than being exempt from permitting), and provided emissions are below these thresholds.

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<sup>2</sup> The reference is to Rule 2-1 as it existed prior to 6-7-95, because that was the version of this rule that EPA's Title V program approval took into account.

## Virginia

“Trivial” units that can be excluded from the permit application are listed by type as a sub category of what Virginia terms “insignificant” units. Insignificant units that need only be listed in the permit (with an identification of the pollutant emitted) are defined entirely by emissions thresholds, as follows: Uncontrolled emissions of 1 tpy or less NO<sub>2</sub>, SO<sub>2</sub>, PM<sub>10</sub>, or VOC, or 10 tpy or less of CO, or 12 pounds per year or less of lead, or 100 pounds per year or less of an ozone depleting compound, or less than specified thresholds for HAPs. These HAP thresholds range from 1 to 1,000 pounds per year.

## Wisconsin

Wisconsin’s regulations pre-date White Paper I, and identify as “insignificant” activities to be listed in the permit many activities that EPA later identified as “trivial.” These activities are listed as “insignificant here but could potentially be treated as “trivial” if discussed with permitting authorities. Wisconsin will also treat as “insignificant” any unit with maximum theoretical emissions (ignoring all controls and permits) of state or federal HAPs or ozone depleting compounds that are below chemical specific limits. See Wisconsin Administrative Code, Natural Resources, §470.05(1)(C)(10).

## Washington

Washington’s program includes emission thresholds based on actual emissions, at 5 tpy for CO, 2 tpy for NO<sub>x</sub>, VOCs, and SO<sub>x</sub>, and 0.75 tpy for PM<sub>10</sub>. There are also specific thresholds for specific HAPs, none of which is higher than 0.5 tpy. All units that exceed these thresholds are significant.

Smaller units that are specifically identified as “categorically exempt” are trivial; all other smaller units are insignificant. (For other permit purposes Washington also lists “non-categorically insignificant” units, but this list has no significance for Title V purposes.)

## ABRASIVE BLASTING

### EPA White Paper

Not discussed.

## Georgia

Blast-cleaning equipment using a suspension of abrasives in water and any exhaust system (or collector) serving them exclusively is “insignificant. Portable blast cleaning equipment is also “insignificant.”

### Mississippi

Blast cleaning equipment using a suspension of abrasives in water is “insignificant,” unless there is a potential to emit more than one pound per hour of any pollutant or more than 0.1 pound per hour of any HAP.

### San Diego

Abrasive blast equipment with a manufacturer’s rated sand capacity of <100 lbs or <1 ft.3 is “insignificant,” as is equipment using abrasive suspended in water. Blast cabinets vented through a control device into the building where the cabinet is located are “trivial.”

### South Carolina

Blast cleaning equipment using a suspension of abrasives in water is “trivial.”

## **AIR CONDITIONING AND VENTILATING EQUIPMENT**

### EPA White Paper

“Air-conditioning units used for human comfort that do not have applicable requirements under Title VI of the [Clean Air] Act” (i.e., for ozone-depleting compounds) are “trivial.”

“Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or industrial or commercial process” are “trivial.”

### Connecticut

Heating, air conditioning and ventilating systems which do not remove air contaminants generated by or released from processor fuel burning equipment and which are separate from such equipment, are “insignificant.”

Air conditioning units used for human comfort that do not have applicable requirements for ozone depleting compounds under Title VI of the Clean Air Act are “insignificant.”

Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing/industrial or commercial process are “insignificant.”

### Georgia

Vents from continuous emission monitors and other analyzers are “trivial.”

Air conditioning units used for human comfort that do not have applicable requirements for ozone depleting components under Title VI of the Clean Air Act are “trivial.”

Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing/industrial or commercial process are “trivial.”

## Maine

Comfort air conditioning or air cooling systems, not used to remove air contaminants from specific equipment, are “trivial.”

Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves, and storage tanks subject to size and service limitations are “trivial.”

Vents from continuous emissions monitors and other analyzers, rooms, buildings and enclosures that contain permitted emissions units or activities from which local ventilation, controls and separated exhaust are provided, are “trivial.” Manual wall vents and powered wall vents used for temperature control of a building or structure are “trivial.” Material and chemical storage area vents where closed containers are present are “trivial.”

## Mississippi

These systems are trivial if they do not “transport, remove, or exhaust air pollutants to the atmosphere.

## Oregon

Air cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment is “insignificant.”

Air vents from air compressors and air purification systems are “insignificant.”

Air conditioning and ventilating equipment is “trivial,” unless it is “designed to remove air contaminants generated by or released from specific units or equipment.” Those units are significant.

## San Francisco / BAAQMD

Comfort air conditions and ventilating equipment not designed to remove contaminants from particular items of equipment is “insignificant.” (Rule 2-1-128.1)

## South Carolina

Comfort air conditioning or ventilation systems not used to remove air contaminants generated by or released from specified units of equipment are “trivial.”

## Virginia

Comfort air conditioning or ventilation systems, not used to remove air contaminants generated by or released from specific units of equipment, are “trivial.”

### Washington

Air vents from air compressors, vents from continuous emissions monitors and other analyzers, rooms, buildings and enclosures that do not contain equipment or activities that generate regulated pollutants, are “trivial.”

Comfort air conditioning, not used to remove air contaminants from specific equipment, is “trivial.” Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves, and storage tanks are “trivial.”

## **CHAMBERS AND SIMULATORS**

### EPA White Paper

Environmental chambers not using hazardous air pollutant gases, shock chambers, humidity chambers and solar simulators are “trivial.”

### Connecticut

Environmental chambers not using HAP gasses, shock chambers, humidity chambers and solar simulators are “insignificant” (but not “trivial”).

### Georgia

Environmental, shock or humidity chambers not using HAP gasses and solar simulators are “trivial.”

### **Maine**

Shock chambers, humidity chambers, solar simulators, and environmental chambers not using HAP gasses are “trivial.”

### San Diego

No specific provisions. See White Paper.

### San Francisco

Local use of gases that would be pollutants is trivial, if “essentially all” of the gas is confined to the area of intended use.

### Washington

Environmental chambers not using HAP gasses, humidity chambers, shock chambers, and solar simulators are “trivial.”

## **COATING OPERATIONS**

### **EPA White Paper**

Cleaning and painting for maintenance purposes are “trivial” only if they are not subject to VOC or HAP “control requirements.”

### **Connecticut**

Equipment used for surface coating, painting, dipping or spraying operations is “insignificant” unless it will emit VOCs or HAPs. Aerosol spray cans are “insignificant.”

### **Florida**

Surface coating facilities in ozone attainment areas are “insignificant,” provided that 6.0 gallons of coatings per day or less are applied.

### **Georgia**

Equipment used for surface coating, painting, dipping or spraying operations is “trivial” unless it will emit VOCs or HAPs.

Use of aerosol spray cans that is not part of a manufacturer’s process is “trivial.”

Electrostatic powder coating booths with an appropriately designed and operated particulate control systems are “insignificant.”

Equipment used exclusively for mixing and blending water-based adhesives and coating at ambient temperatures is also “insignificant.”

### **Louisiana**

Certain non-production painting activities are “trivial.”

### **Maine**

Parylene coating using less than 500 gallons of coating per year are “insignificant.”

Dip-coating operations, using materials with less than one percent VOCs, are “insignificant.”

Surface coating, using aqueous solutions or suspension containing less than one percent VOCs is “insignificant.” Surface coating, using less 2 gallons per day is “insignificant.” Surface coating and painting processes which exclusively use non-refillable aerosol cans are “trivial.”

Electrolytic deposition process that do not emit HAPs are “trivial.”

## San Diego

Liquid surface coating operations at sources that use less than 30 gal/day of coatings are “insignificant,” if the coating contains less than 20 grams per liter of VOCs.

## San Francisco / BAAQMD

Architectural coating operations, for stationary structures or appurtenances, are insignificant.

Coating operations using less than 30 gal/year of coatings are insignificant (Rule 2-2-119)

## Washington

Parylene coatings using less than 500 gallons of coating per year are “insignificant.”

Surface coating, using less than 2 gallons per day, is “insignificant.” Surface coating, using aqueous solution or suspension, is “trivial.”

Dip-coating operations, using materials with less than one percent VOCs, wax application, and surface coating, aqueous solution or suspension, are “trivial.”

## **COMBUSTION**

### Georgia

Waste burning incinerators of less than 8 million Btu/h.r heat input firing 10% or less pathological waste are insignificant. If more than 10% pathological waste is burned the heat input limit is 4 million Btu/hr.

### Maine

Combustion sources, excluding incinerators, with a heat input rate of less than 5 MMBtu/hr exclusively using natural gas, butane, propane and/or LPG are “insignificant.”

Combustion sources, excluding incinerators, less than 0.5 MMBtu/h.r, using any commercial fuel containing less than 0.4% by weight sulfur for coal, or less than 1% by weight sulfur for other fuels are “insignificant.”

Combustion sources, excluding incinerators, of less than 3 MMBtu/hr if using kerosene, #1 or #2 fuel oil are “insignificant.”

Combustion sources, excluding incinerators, not greater than 1.0 MMBtu/hr if burning oil, waste wood, or wastepaper are “insignificant.”

Combustion turbines, of less than 500 HP are “insignificant.”

### Mississippi

Combustion equipment is “insignificant” if the rated input capacity is less than 10 million Btu/hr and the fuel is LPG or natural gas supplied by a utility, or commercial fuel oil of #2 or lighter.

Space heaters utilizing natural gas or LPG gas and used exclusively for space heating are “insignificant.”

### Oregon

Distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 2.0 million Btu/hr is “insignificant.”

Natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr is “insignificant.”

### San Diego

Fuel burning equipment except steam boilers and internal combustion engines with a heat input rating of less than 50 million Btu/hr fired exclusively on natural gas or LPG is “insignificant.” Equipment fired with other fuels is “insignificant” if the heat input rating is less than 1 million Btu/hr and the equipment is not part of a process that requires a permit in the District.

Steam boilers with a rating of 5 million Btu/hr or less are “insignificant.”

### San Francisco

Certain space heating units of less than 20 million Btu./hr capacity and burning natural gas or LPG are insignificant. (Rule 2-1-113.1-2.14)

Boilers and other combustion equipment are insignificant if liquid fuel is used and the capacity is 1 million Btu/hr or less, or if natural gas or LPG are used and the capacity is 10 million Btu/hr or less. (Rule 2-1-114).

### Virginia

Indoor or outdoor kerosene heaters and space heaters operated by direct heat transfer, including portable heaters which can reasonably be carried and relocated by an employee, are “insignificant.”

### Washington

Combustion sources with a heat input rating of less than 5 million Btu/hr exclusively using natural gas and/or LPG are “insignificant.”



Combustion sources, less than 500,000 Btu/hr, using any commercial fuel containing less than 0.4% by weight sulfur for coal or less than 1% by weight for other fuels, are “insignificant.”

Combustion sources of less than 1 million Btu/hr using kerosene, No. 1 or No. 2 fuel oil, are “insignificant.”

Combustion sources, not greater than 500,000 Btu/hr burning used oil and not greater than 400,000 Btu/hr burning waste wood or waste paper, are “insignificant.”

Combustion turbines of less than 500 HP are “insignificant.”

Space heaters and non-process hot water heaters using natural gas, propane or kerosene and generating between 5 and 20 million Btu/hr are “insignificant.”

Space heaters and non-process hot water heaters using electricity, natural gas, propane or kerosene and generating less than 5 million Btu/hr are “trivial.”

#### Wisconsin

Convenience space heating units with heat input capacity of less than 5 million Btu/hr that burn gaseous fuels, liquid fuels or wood are “insignificant.”

### **DOMESTIC SEWAGE**

Domestic sewage systems and their stacks and vents are “trivial” in all jurisdictions.

### **EMISSION CONTROL EQUIPMENT**

#### San Francisco/ BAAQMD

Abatement devices on units that are not required to have a permit (i.e., that are insignificant) are “insignificant.” (Rule 2-1-1 13.1-2.4)

### **EMERGENCY AND BACKUP EQUIPMENT**

#### EPA White Paper

No specific provisions.

#### Connecticut

Emergency (backup) electrical generators at residential locations are “insignificant.”

#### San Francisco / BAAQMD

Internal combustion engines used solely as an emergency standby source of power are “trivial.”

Portable IC engines used for emergency pumping of water are “insignificant.” (Rule 2.1-113.1-2.10)

### Florida

Emergency electrical generators, heating units and general purpose diesel engines operating no more than 400 hours per year are “trivial.”

### Georgia

Emergency road flares are “trivial.”

Stationary engines burning natural gas, gasoline, diesel fuel or dual fuels which are used exclusively for emergency power generation are “insignificant.” These engines are also “insignificant” if used for peaking and standby power generation for not more than 200 hours per year.

### Maine

Flares used to indicate danger to the public are “trivial.”

### Mississippi

Backup or emergency generators, boilers or other fuel burning equipment that are purely for backup and not oversized are “insignificant.”

### Oregon

Health, safety, and emergency response activities are “insignificant.”

Emergency generators and pumps used only during loss of primary equipment or utility service are “insignificant.”

### San Diego

No separate provision. See equipment type.

### South Carolina

Flares used solely to indicate danger to the public are “trivial.”

Emergency or portable generators less than 150 KW are “insignificant.”

### Virginia

Gas flares or flares used solely to indicate danger to the public are “trivial.”

### Washington

Emergency generators and pumps are “trivial.”

Flares used to indicate danger to the public are “trivial.”

## **FIRE SUPPRESSION EQUIPMENT**

### EPA White Paper

“Fire suppression equipment” is “trivial.”

### Florida

Fire and safety equipment is “trivial.”

### Georgia

Fire suppression systems are “trivial.”

Fire fighting and similar safety equipment used to train fire fighters or other emergency personnel is “trivial.”

### Maine

Fire fighting and similar safety equipment used to train fire fighters excluding fire drill pits is “trivial.”

### Oregon

Fire brigade training and “fire suppression” are “insignificant.”

### San Diego

No specific provision. Relevant fire suppression system components must be considered individually.

### San Francisco / BAAQMD

Portable IC engines used for emergency pumping of water are “insignificant.” (Rule 2.1-113.1-2.10)

### South Carolina

Fire fighting equipment, “prop fires”, and any other activities or equipment associated with fire fighting training, is “trivial.” Prop fires must be fired on natural gas or propane.

### Washington

Fire fighting and similar safety equipment and equipment used to train fire fighters excluding fire drill pits are “trivial.”

### Wisconsin

“Fire control equipment” is “insignificant.”

Fire fighting equipment and the equipment used to train firefighters are “trivial.”

## **FOOD PREPARATION**

### EPA White Paper

“Non-commercial food preparation” is “trivial.”

### Connecticut

Grills, ovens, stoves, refrigerators, vending machines and other restaurant-style food preparation or storage equipment are “insignificant.”

Non-commercial food preparation is “insignificant.”

### Florida

Non commercial cold storage refrigeration equipment, and bakery ovens and confection cookers where the products are intended for human consumption are “trivial.”

Non-commercial food preparation or equipment used for cooking food for immediate human consumption is “trivial.”

### Maine

Food preparation for human consumption, including cafeterias, kitchen facilities and barbecues, located at a source for providing food service on the premises is “trivial.”

### Mississippi

Fuel use related to cooking for human consumption is “trivial.”

### Oregon

“Food service” activities are “insignificant.”

### San Diego

No specific provision. See White Paper.

### San Francisco

Most food preparation equipment of less than full commercial scale is “insignificant.” Only residential food preparation is “trivial.” (Rule 2-I-117)

### South Carolina

Equipment on the premises of industrial and manufacturing operations used solely for the purpose of preparing food for immediate human consumption is “trivial.”

### Virginia

Equipment on the premises of industrial and manufacturing operations used solely for the purpose of preparing food for human consumption is “trivial.”

### Washington

Food preparation for human consumption including cafeterias, kitchen facilities and barbecues located at a source for providing food service on the premises is “trivial.”

## **FORGES, FOUNDRY, METAL FORMING**

### EPA White Paper

Blacksmith forging equipment is “trivial.”

### Connecticut

Blacksmith forges are “insignificant.”

Drop hammers or hydraulic presses for forging or metal working are “insignificant.”

### Georgia

Equipment used exclusively for rolling, forging, pressing, stamping or spinning metals such as drop hammers or hydraulic presses for forging or metal working is “trivial.”

Carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, shot blasting, shot peening, or polishing of ceramics, glass, leather, metals, plastics, rubber, concrete, paper stock or wood, also including roll grinding and ground wood pulping stone sharpening is “insignificant,” provided that the activity is performed indoors, no fugitive particulate emissions enter the outdoor atmosphere, and no visible emissions enter the outdoor atmosphere.

Die casting machines, equipment used for sintering of glass or metals, but not including equipment used for sintering metal-bearing ores, metal scale, clay, fly ash, or metal compounds, are “insignificant.”

## Maine

Foundry sand molds, unheated and using binders with less than 0.25% free phenol by sand weight are “insignificant.”

Rolling, forging, drawing, stamping, shearing or spinning hot or cold metals is “insignificant.”

The following activities are “trivial:” metal casting molds and molten metal crucibles that do not contain potential HAPs, metal or glass heat-treating, in absence of molten materials, oils or VOCs; drop hammers or hydraulic presses for forging or metal working; metal fume vapors from electrically heated foundry/forging operations wherein the components of the metal do not generate HAPs or HAP precursors; metal melting and molten metal holding equipment and operations where the components of the metal do not generate HAPs or HAP precursors; die casting equipment; and extrusion equipment.

## Mississippi

Sand mold forming equipment to which no heat is applied and from which no organics are emitted are “insignificant.”

## San Diego

Equipment used exclusively for forging, pressing, rolling or drawing metals, or for heating immediately prior to these processes, is “trivial.”

## San Francisco / BAAQMD

Equipment for forging, pressing, rolling, stamping or drawing metals or for heating metal prior to these actions is “insignificant” if fuel use is <10 million Btu/hr and lubricants have a boiling point of 400°F or more and organic emissions are less than 150 lb/day. (Rule 2-1-121.13)

Molds for casting metals are “insignificant.” Foundry sand mold forming equipment to which no heat is applied is “insignificant” unless organic binders yielding in excess of 0.25% free phenol by weight of sand are used. (Rule 2-1-122)

## Washington

Foundry sand molds, unheated and using binders with less than 0.25% free phenol by sand weight, are “insignificant.”

The following activities are “trivial”: metal finishing or cleaning using tumblers; metal casting molds; die casting; metal or glass heat-treating in the absence of molten materials, oils, or

VOCs; drop hammers or hydraulic presses or forging or metal working; rolling, forging, drawing, stamping, shearing, or spinning hot or cold metals; metal fume vapors from electrically heated foundry/forging operations where the components of the metal do not generate HAPs or HAP precursors; metal melting equipment and operations where the components of the metal do not generate HAPs or HAP precursors; and extrusion equipment.

## **FUEL STORAGE AND TRANSFER OPERATIONS**

### **EPA White Paper**

No discussion.

### **Connecticut**

Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any VOC or HAP are “insignificant.” Some storage tanks containing petroleum liquids or other volatile organic liquids may be determined to be “insignificant” or trivial on a case-by-case basis depending on tank capacity and vapor pressure.

Storage tanks, reservoirs, and pumping and handling equipment of any size containing non-volatile aqueous salt solutions are “insignificant,” provided appropriate lids and covers are utilized.

### **Georgia**

Storage tanks, vessels, and containers holding or storing substances that will not emit any VOC or HAP are “trivial.”

Storage tanks, reservoirs, and pumping and handling equipment of any size containing non-volatile aqueous salt solutions, provided appropriate lids and covers are utilized are “trivial.”

All petroleum liquid storage tanks storing a liquid with a true vapor pressure of equal to or less than 0.50 psi as stored are “insignificant.”

All petroleum liquid storage tanks with a capacity of less than 40,000 gallons storing a liquid with a true vapor pressure of equal to or less than 2.0 psia as stored are “insignificant.”

All petroleum liquid storage tanks with a capacity of less than 10,000 gallons storing a petroleum liquid are “insignificant.”

Pressurized vessels designed to operate in excess of 30 psig storing a petroleum fuel are “insignificant.”

Gasoline storage and handling equipment at loading facilities handling less than 20,000 gallons per day or at vehicle dispensing facilities are “insignificant.”

Portable drums, barrels and totes are “insignificant,” provided that the volume of each container does not exceed 550 gallons.

All chemical storage tanks used to store a chemical with a true vapor pressure of less than or equal to 10 millimeters of mercury (0.19 psia) are “insignificant.”

### Maine

The operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity (35 cubic ft.), heated only to the minimum extent to avoid solidification if necessary is “insignificant.”

The operation, loading and unloading of storage tanks, not greater than 1,000 gallon capacity with lids or other appropriate closure, not for use with HAPs, maximum vapor pressure 550 mmHg is “insignificant.”

The operation, loading and unloading of VOC storage tanks (including gasoline storage tanks), 10,000 gallons capacity or less, with lids or other appropriate closure, vapor pressure not greater than 80 mmHg at 21 degrees Celsius is “insignificant.”

The operation, loading and unloading, and storage of butane, propane, or liquefied petroleum gas (LPG), storage tanks, vessel capacity under 40,000 gallons is “insignificant.”

### Mississippi

Storage tanks for fuel oils, kerosene, diesel, jet fuel, crude oil, natural gas and LPG and “tall oil storage tanks,” are “insignificant.”

### Oregon

Storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids are “insignificant.”

On-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel [fuel] used exclusively for fueling of the facility’s fleet of vehicles, are “insignificant.”

Natural as, propane, and liquefied petroleum gas storage tanks and transfer equipment is “insignificant.”

Pressurized tanks containing gaseous compounds are “insignificant.”

### San Diego

Tanks of less than 260 gallons capacity storing [volatile] organic compounds are “insignificant.” Tanks storing other materials are “trivial.” Tanks storing organic solvents that



are liquid at standard temperature and pressure are “trivial” unless the material is to be used as a fuel. However, all of these units are “significant” if any other regulatory requirements apply.

Fuel transfer operations are “significant.”

#### San Francisco / BAAOMD

Tanks of less than 260 gallons capacity are insignificant. Fuel oil tanks are insignificant if gravity of the fuel is 40 API or less and the tank capacity is 10,000 gallons or less. Any storage of fuel oil with a gravity of 25 API or less is insignificant. (Rule 2-1-123.1 and .3)

Any transfer of fuel oil with a gravity of 25 API or less is insignificant. (Rule 2-1-123.3.10)

#### South Carolina

All petroleum storage tanks less than 3.8 cubic meters (1000 gallons) are “trivial.”

Pressurized storage tanks containing fluids such as liquid petroleum gas (LPG), liquid natural gas (LNG), natural gas, or inert gases are “trivial.”

All storage tanks, excluding those listed above, with a capacity less than 38.7 cubic meters (10,000 gallons) that store organic liquids, excluding those that store a hazardous air pollutant except as an impurity, are “insignificant.”

#### Washington

Storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity (35 cubic ft.), heated only to the minimum extent to avoid solidification if necessary, are “insignificant.”

Storage tanks, not greater than 1,100 gallon capacity, with lids or other appropriate closure, not for use with HAPs, maximum vp 550 mm Hg, are “insignificant.”

Storage of VOCs, 10,000 gallons capacity or less, with lids or other appropriate closure, and vapor pressure not greater than 80 mm Hg at 21 degrees Celsius is “insignificant.”

Storage of butane, propane, or liquefied petroleum gas, vessel capacity under 40,000 gallons is “insignificant.”

#### Wisconsin

Fuel oil storage tanks with a capacity of 10,000 gallons or less are “insignificant.”

## HAND HELD EQUIPMENT

### EPA White Paper

"Hand held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning or machining wood, metal, or plastic" is "trivial."

### Connecticut

Space heaters and portable electrical generators which can reasonably be carried by one person by hand are insignificant.

Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning or machining wood, metal or plastic is insignificant.

Air compressors and pneumatically operated equipment, including hand tools, are insignificant.

Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation is insignificant.

### Georgia

Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning or machining is "trivial."

Air compressors and pneumatically operated equipment, including hand tools, is "trivial."

Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation is "trivial." Hot melt adhesive application with no VOC's in the adhesive formulation is also "trivial."

Space heaters are "trivial."

### Maine

Air compressors and pneumatically operated equipment, systems and hand tools are trivial.

### Mississippi

These types of hand held equipment are trivial when used for precision parts or metals.

### San Diego

Back pack blowers are "trivial."

Equipment that is “trivial” under the White Paper is “trivial,” except when used on fiber reinforced plastics.

#### San Francisco / BAAOMD

All equipment for “buffing, carving, cutting, drilling, grinding, machining, planing, routing, sanding, sawing, shredding, stamping or turning” wood, metals, plastics, rubber or certain other materials is insignificant provided “organic emissions” from coolants or lubricants or cutting oils are less than 150 lb/day. (Rule 2-1-121.1.)

#### South Carolina

Indoor or outdoor kerosene space heaters are “trivial.”

### **INTERNAL COMBUSTION ENGINES (NON-EMERGENCY)**

#### EPA White Paper

“Internal combustion engines used for landscaping purposes” are “trivial.”

Portable electrical generators that can be moved by hand from one location to another are “trivial.”

#### Connecticut

Internal combustion engines used for landscaping purposes are insignificant.

#### **Florida**

Internal combustion engines in boats, aircraft and vehicles used for transportation of passengers or freight are trivial.

#### Georgia

Stationary engines burning natural gas, LPG, and/or diesel fuel are “insignificant,” provided that the output of each engine does not exceed 400 hp and that no individual engine operates for more than 2,000 hours/yr. Gasoline engines are “insignificant,” provided that the output of each engine does not exceed 100 hp and that no individual engine operates for more than 500 hours/yr.

#### Maine

Internal combustion engines for propelling or powering a vehicle are trivial.

#### San Diego

Back-pack blowers are “trivial.”

IC engines rated at <50 BHP are “insignificant”.

#### San Francisco / BAAQMD

Any IC engine of less than 250 BHP is insignificant. (Rule 2-1-1 13.1-2.8)

Portable or standby IC engines used less than 30 days per year at a facility are insignificant. (Rule 2-1-1 13.1-2.10)

#### South Carolina

Internal combustion engines used to drive compressors or pumps with a mechanical power output of less than 200 HP are “insignificant.”

#### Washington

Internal combustion engines for propelling or powering a vehicle are trivial.

#### Wisconsin

Internal combustion engines used for warehousing and material transport, fork-lifts and courier vehicles, front-end loaders, graders and trucks, carts and maintenance trucks are “insignificant.”

### JANITORIAL AND HOUSEKEEPING ACTIVITIES

#### EPA White Paper

“Janitorial services and consumer use of janitorial products” are “trivial.”

#### Connecticut

Garbage compactors and waste barrels are insignificant.

All clerical and janitorial activities are insignificant.

#### Georgia

“Janitorial services and consumer use of janitorial products” are “trivial.”

Vacuum cleaning systems used exclusively for industrial, commercial or residential housekeeping purposes are “trivial.”

#### Mississippi

Vacuum cleaning systems for housekeeping are exempt except at sources with hazardous air pollutants.

## Oregon

“Janitorial activities” are “insignificant.”

## San Diego

Most janitorial activities are viewed in San Diego as having no potential to emit air contaminants, and so are “trivial.” “Vacuum cleaning systems used exclusively for housekeeping purposes” are “insignificant.” Other vacuum cleaning systems are not “insignificant.”

## San Francisco / BAAOMD

Vacuum cleaning systems used for housekeeping are “insignificant.” (Rule 2-1-128.6)

## South Carolina

Any consumer product used for the same purpose, and in similar quantities, as would be used in normal consumer use such as janitorial cleaning supplies, office supplies, personal items, maintenance supplies, etc. is “trivial.”

## Wisconsin

“Janitorial activities” are “insignificant.”

## **LABORATORY, INSPECTION AND TEST EQUIPMENT AND ACTIVITIES**

### EPA White Paper

“Equipment used for quality control / assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis” is “trivial.”

“Hydraulic and hydrostatic testing equipment” is “trivial.”

“Bench-scale laboratory equipment used for physical or chemical analysis” is “trivial.” Associated fume hoods or vents are not a part of this category.

## Connecticut

Laboratory hoods used solely for the purpose of experimental study or teaching of any science or testing or analysis of drugs, chemicals, chemical compounds, or other substances are “insignificant,” provided that the containers used for reactions, transfers, and other handling of substances under such laboratory hoods are designed to be easily and safely manually manipulated by one person.

Bench-scale laboratory equipment used for physical or chemical analysis, are “insignificant.” Routine calibration and maintenance of laboratory equipment or other analytical instruments is also “insignificant.”

Hydraulic and hydrostatic testing equipment is “insignificant.”

### Florida

Laboratory equipment used exclusively for chemical or physical analyses are “trivial.”  
Vacuum pumps in laboratory operations are also “trivial.”

### Georgia

Bench-scale laboratory equipment used for physical or chemical analysis is “trivial.”  
Associated fume hoods and vents are “insignificant.”

Routine calibration and maintenance of laboratory equipment or other analytical instruments is “trivial.”

Hydraulic and hydrostatic testing equipment is “trivial.”

Equipment used for quality control /assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis is “trivial.” Sampling connections used exclusively to withdraw materials for testing and analysis, including air contaminant detectors and vent lines, are also “trivial.”

Research and development facilities, quality control testing facilities and/or small pilot projects, where combined daily emissions from all operations are not individually major or are support facilities not making significant contributions to the product of a collocated major manufacturing facility are “insignificant.”

### Maine

Hydraulic and hydrostatic testing equipment is “trivial.”

Chemical, metallurgical, or physical analytical laboratory operations or equipment including fume hoods and vacuum pumps are “trivial.”

Inspection equipment for metal products is “trivial.”

### Mississippi

Laboratory equipment used exclusively for chemical or physical analysis for quality control or environmental monitoring purposes is “trivial.”

Equipment used for hydraulic and hydrostatic testing is “trivial.”

Equipment used for inspection of metal products is “insignificant.”

Instrument calibration is “insignificant.”

Bench-scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices but excluding research and development facilities is “insignificant.”

#### San Diego

Quality control testing equipment used exclusively for chemical and physical analysis is “insignificant.” Metal inspection tanks are insignificant unless they have a liquid surface area >5 ft.<sup>2</sup>, use organic solvents, and use a spray type flow or a means of agitation.

#### San Francisco

Some laboratories are “insignificant” based on floor space and fume hood count. Any laboratory that will not emit a HAP except as a result of an accident or upset is “insignificant.” (Rule 2-2-1 13.1-2.12)

Hydraulic and hydrostatic test equipment and bench scale laboratory equipment used for chemical or physical analysis or experimentation or for quality control testing, are “insignificant.” Equipment used for the inspection of metal products is also “insignificant.” (Rule 2-1-126)

#### South Carolina

Laboratory equipment and compounds used for chemical, biological or physical analyses such as quality control, environmental monitoring, bench-scale research or studies, training in chemical analysis techniques, and minor research and development are “trivial” (this does not apply to facilities where R & D is the primary objective). This exemption extends to the venting of in-line and in-situ process analysis equipment and other monitoring and sampling equipment.

Vacuum production devices used in laboratory operations are also “trivial.”

Equipment used for hydraulic or hydrostatic testing is “trivial.”

#### Virginia

Air contaminant detectors or recorders, combustion controllers or shut-offs are “trivial.”

Laboratories used solely for the purpose of quality control or environmental compliance testing that are associated with manufacturing, production or other industrial or commercial facilities are “trivial.”

#### Washington

Chemical or physical analytical laboratory operations or equipment, including fume hoods and vacuum pumps, “may be determined to be insignificant on a case-by-case basis by the permitting authority.”

Hydraulic and hydrostatic testing equipment is “trivial.”

## **LASER TRIMMERS**

### EPA White Paper

“Laser trimmers using dust collection to prevent fugitive emissions” are “trivial.”

### Connecticut

Carbon dioxide lasers, used only on metals and other materials which do not emit HAP in the process are “insignificant.”

Laser trimmers using dust collection to prevent fugitive emissions are “insignificant.”

### Georgia

Carbon dioxide lasers, used only on metals and other materials which do not emit HAPs in the process are “trivial.”

Laser trimmers using dust collection to prevent fugitive emissions are also “trivial.”

### Maine

Carbon dioxide lasers, used only on metals and other materials which do not emit HAPs in the process, are “trivial.”

Laser trimmers, using dust collection to prevent fugitive emissions, are “trivial.”

### San Diego

The use of dust collection equipment would make these units “significant.”

### Washington

Laser trimmers, using dust collection to prevent fugitive emissions, are trivial. Carbon dioxide lasers, used only on metals and other materials which do not emit HAPs in the process are also “trivial.”

## **LAUNDRY OPERATIONS**

### EPA White Paper

Laundry activities, except for dry-cleaning and steam boilers, are “trivial.”



### Connecticut

Lavatory vents, hand dryers, and non-commercial clothes dryers, not including dry cleaning machinery, are “insignificant.”

Laundry activities, except for dry-cleaning and steam boilers, are “insignificant.”

### **Florida**

Laundry dryers, extractors, or tumblers for fabrics cleaned with only water solutions of bleach or detergents are “trivial.”

Perchloroethylene dry cleaning facilities with a solvent consumption of less than 1,475 gallons per year are “trivial.” Petroleum dry cleaning facilities with a solvent consumption of less than 3,250 gallons per year are “trivial.”

### Georgia

Laundry activities are “trivial,” except for dry-cleaning and steam boilers.

Non-perchloroethylene dry-cleaning equipment with a capacity of 100 lbs/yr or less of clothes is “insignificant.”

### **Maine**

Laundering, dryers, extractors, tumblers for fabrics, using water solutions of bleach and/or detergents are “trivial.”

### **Oregon**

On-site laundry activities are “insignificant.”

### San Diego

Laundry equipment that does not employ organic solvents or launder material with solvent residues and that emits less than 5 lbs/day of VOCs is “insignificant.”

### Virginia

Laundry operations that service uniforms or other clothing used at industrial facilities are “insignificant.”

### Washington

Laundering, dryers, extractors, tumblers for fabrics, using water solutions of bleach and/or detergents, are “trivial.”

## **MAINTENANCE ACTIVITIES (NOT INCLUDING COATING OPERATIONS)**

### **EPA White Paper**

“Plant maintenance and upkeep activities (e.g., grounds keeping, general repairs, cleaning, painting, welding, plumbing, retarring roofs, installing insulation, and paving parking lots) provided these activities are not conducted as part of a manufacturing process, are not related to the source’s primary business activity, and not otherwise triggering a permit modification” are “trivial.”

### **Connecticut**

Routine housekeeping activities such as painting buildings, roofing, and paving parking lots are insignificant.

Maintenance activities such as vehicle repair, carpentry shops, electrical charging stations, grinding and polishing operations, maintenance shop vents, and miscellaneous non-production surface cleaning, preparation and painting operations, are “insignificant.”

Plant maintenance and upkeep activities (e.g., grounds keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots) are “insignificant,” provided these activities are not conducted as part of a manufacturing process, are not related to the source’s primary business activity, and not otherwise triggering a permit modification. Cleaning and painting activities qualify if they are not subject to VOC or HAP control requirements.

Repair or maintenance shop activities not related to the source’s primary business activity, not including emissions from surface coating or de-greasing (solvent metal cleaning) activities, and not otherwise triggering a permit modification, are “insignificant.”

### **Florida**

Decreasing facilities using heavier-than-air vapors exclusively are “trivial.”

Belt or drum sanders having a total sanding surface of five square feet or less and other equipment used exclusively on wood or plastics or their products having a density of 20 pounds per cubic foot or more are “insignificant.”

### **Georgia**

Plant maintenance and upkeep activities (e.g., grounds keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots) are “trivial,” provided these activities are not conducted as part of a manufacturing process, are not related to the source’s primary business activity, and not otherwise triggering a permit modification.

## Louisiana

Maintenance of grounds, general repairs, lawn care and steam cleaning are “trivial.”

## Maine

Plant upkeep including routine housekeeping, preparation for and painting of structures or equipment, retarring roofs, applying insulation to buildings in accordance with applicable environmental and health and safety requirements and paving or striping of parking lots is “trivial.”

Repair and maintenance activities, not involving installation of an emissions unit and not increasing the potential to emit any regulated pollutants is “trivial.”

Lawn and landscaping activities are “trivial.”

Vehicle exhaust from auto maintenance and repair shops is trivial. General vehicle maintenance including vehicle exhaust from repair facilities is “trivial.”

Carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, shot blasting, shot peening, sintering or polishing; ceramics, glass, leather, metals, plastics, rubber, concrete, paper stock or wood is trivial, provided that it is performed indoors, and no fugitive particulate emissions enter the environment.

## Mississippi

Building maintenance is “trivial.”

Maintenance, structural changes and repairs are trivial if they do not change the capacity of the processor change emissions of air pollutants. Housekeeping and building maintenance are “trivial.”

## Oregon

Grounds keeping activities including, but not limited to building painting and road and parking lot maintenance are “insignificant.”

“Maintenance and repair shops” are “insignificant.”

Routine maintenance, repair and replacement, such as anticipated activities most often associated with and performed during regularly scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and wood working, is “insignificant.”

## San Diego

“Repair or maintenance” activities are “trivial.”

### South Carolina

Routine housekeeping or plant upkeep activities such as painting, roofing, paving, including all associated preparation are “trivial.”

Devices used solely for safety such as pressure relief valves, rupture discs, etc., if associated with a permitted emission unit, are “trivial.”

### Virginia

Interior maintenance activities and the equipment and supplies used to carry out these activities, such as janitorial cleaning products and air fresheners, but not cleaning of production equipment, are “trivial.”

Architectural maintenance and repair activities conducted to take care of the buildings and structures at the facility, including repainting, reroofing and sandblasting, where no structural repairs are made in conjunction with the installation of new or permanent facilities are “trivial.”

Exterior maintenance activities conducted to take care of the grounds of the source, including lawn maintenance, are “trivial.”

### Washington

Plant up-keep, including routine housekeeping, painting buildings, retarring roofs, applying insulation to buildings in accordance with applicable environmental and health and safety requirements and paving or stripping parking lots, is “trivial.”

General vehicle maintenance including vehicle exhaust from repair facilities is “trivial.”

Carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, shot blasting, shot peening, or polishing ceramics, leather, metals, plastics, rubber, concrete, paper stock or wood is trivial, provided it is performed indoors, there is particulate emission control in the immediate vicinity, exhaust from the particulate control is within the building housing the activity, and no fugitive particulate emissions enter the environment.

### Wisconsin

Maintenance of grounds, equipment and buildings, including lawn care, pest control, grinding, cutting, welding, painting wood working, general repairs and cleaning are “insignificant.” However, the use of organic compounds used as clean-up solvents should be listed in the permit application.

Maintenance of boilers, turbines, generators, heating and air conditioning systems, and pollution control equipment is also “insignificant.”

## **MILLING AND GRINDING ACTIVITIES**

### **Maine**

Milling and grinding activities, using paste-form compounds with less than one percent VOCs are “insignificant.”

### **Washington**

Milling and grinding activities, using paste-form compounds with less than one percent VOC, are trivial.

## **MOBILE SOURCES, PASSENGER VEHICLES, AND PORTABLE EQUIPMENT**

### **EPA White Paper**

“Fugitive emissions related to movement of passenger vehicles provided the emissions are not counted for applicability purposes” are “trivial.”

“Combustion emissions from propulsion of mobile sources, except for vessel emissions from Outer Continental Shelf sources” are “trivial.”

### **Connecticut**

Combustion emissions from propulsion of mobile sources, except for vessel emissions from Outer Continental Shelf sources are “insignificant.”

Fugitive emission related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted, is “insignificant.”

### **Louisiana**

Mobile sources, such as automobiles, trucks, and aircraft are “trivial.”

### **Maine**

Portable drums and totes are “trivial.”

Mobile transport tanks on lvehicles, except for those containing asphalt are “trivial.”

### **Mississippi**

Mobile sources are “trivial.”

## Oregon

Evaporative and tail pipe emissions from on-site motor vehicle operation are “insignificant.”

Engines that propel vehicles are “trivial.”

## San Francisco / BAAOMD

Vehicles are insignificant. Attached equipment is not. (Rule 2-1-113.1-1.3)

Registered Inter-District Portable Equipment is insignificant. (Rule 2-1-105)

## South Carolina

Motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines are “trivial.” This exemption only applies to the emissions from the internal combustion engines used to propel such vehicles.

## Virginia

“Portable generators” are “trivial.”

The engine of any vehicle, including but not limited to any marine vessel, any vehicle running upon rails or tracks, any motor vehicle, any fork-lift, any tractor, or any mobile construction equipment, is “trivial.”

## Washington

“Portable internal combustion engines” are “trivial.”

## OFFICE EQUIPMENT

### EPA White Paper

“Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction” is “trivial.”

### Connecticut

Office equipment, including but not limited to copiers, facsimile and communication equipment, and computer equipment, is “insignificant.”

Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction is “insignificant.”

### Georgia

Consumer use of office equipment and products (i.e., photocopiers, telefax, desktop printers, etc.) are “trivial,” not including printing presses or businesses primarily involved in photographic reproduction.

### Louisiana

“Office activities” are “trivial.”

### Maine

“Office activities” are “trivial.”

“Clerical activities” such as the use of office equipment is “trivial.”

### San Diego

San Diego treats most office equipment as having no potential to emit contaminants, and therefore as “trivial.” Paper shredders and paper disintegrators with a capacity of <600 lbs/hour are “insignificant.”

### South Carolina

Reproduction activities, such as blueprint copiers, xerographic copies, and photographic processes, except operation of such units on a commercial basis, are “trivial.”

### Virginia

Office activities and the equipment and implements used to carry out these activities, such as typewriters, printers, and pens are “trivial.”

Copying and duplication activities for internal use and support of office activities at the source are “trivial.”

Blueprint copiers and photographic processes used as an auxiliary to the principal equipment at the source are “trivial.”

### Washington

“Office activities” are trivial.

### Wisconsin

“Office activities” are “insignificant.”

## **OVENS, FURNACES, KILNS**

### EPA White Paper

Electric and steam-heated drying ovens and autoclaves are “trivial.” The boilers delivering steam, and the articles or substances being dried are not a part of this category.

### Connecticut

Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam, are “insignificant.”

### Georgia

Electric or steam-heated drying ovens and autoclaves are “trivial,” but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.

Furnaces for heat treating glass or metals, the use of which do not involve molten materials or oil-coated parts; porcelain enameling furnaces or porcelain enameling drying ovens; kilns for firing ceramic ware; crucible furnaces, pot furnaces, or induction melting and holding furnaces with a capacity of 1,000 lbs or less each, in which sweating or distilling is not conducted and in which fluxing is not conducted utilizing free chlorine, chloride or fluoride derivatives, or ammonium compounds; and bakery ovens and confection cookers are all “insignificant,” provided that they are electrically heated or fire natural gas, LPG or distillate fuel oil at a maximum total heat input rate of not more than 5 million Btu/hr.

### Maine

Electric ovens used to cure rubber are “trivial.”

Electric or steam-heated drying ovens and autoclaves are “trivial.”

Metal or glass heat treating in the absence of molten materials, oils or VOCS is “trivial.”

### Mississippi

Equipment used to dry glass or metal products is “trivial” if no oil or solid fuel is burned.

Gas fired, diesel fired, infrared and electric ovens with no missions other than products of fuel combustion are insignificant.”

### San Diego

Non-ferrous metal melting furnaces of <2500 in<sup>3</sup>, and other furnaces of <450 in<sup>3</sup> are “insignificant.” Ovens that charge organic solvents or materials containing organic solvents are



“insignificant” if the internal volume is <27 ft.<sup>3</sup>. Ovens should also be evaluated as combustion equipment.

San Francisco / BAAOMD

Gas fired drying ovens of less than 10 million Btu/hr capacity that emit only combustion products are “insignificant.” (Rule 2-1-1 16.4)

Electric ovens of gas fired ovens of less than 10 million Btu/hr associated with insignificant coating operations are “insignificant.” (Rule 2-1-1 19.4)

Furnaces with a capacity of 1000 lbs or less, or processing 100 tons/yr of metal or less are “insignificant” (unless subject to a state metal-melting toxics rule). (Rule 2-1-116.2 and .3)

**OXYGEN SCAVENGING AND OZONE GENERATING EQUIPMENT**

EPA White Paper

Oxygen scavenging (de-aeration) of water and ozone generators are “trivial.”

Connecticut

Oxygen scavenging (de-aeration) of water and ozone generators are “insignificant.”

Georgia

Oxygen scavenging (de-aeration) of water and ozone generators are “trivial.”

Ozonation processor process equipment is “insignificant.”

Maine

“Ozonation equipment” is “trivial.”

San Diego

No specific provisions.

San Francisco / BAAOMD

Ozone generators that produce less than 1 lb/day or ozone are insignificant. (Rule 2-1-128.17)

Equipment used to liquefy or separate oxygen or nitrogen from the air is insignificant. (Rule 2-1-128.7)

## Washington

Ozonation equipment is “trivial.”

## **REPAIR SHOPS**

### EPA White Paper

“Repair or maintenance shop activities not related to the source’s primary business activity, not including emissions from surface coating or de-greasing (solvent metal cleaning) activities, and not otherwise triggering a permit modification” are “trivial.”

### Maine

Routine repair of equipment using commercially available cleaners, lubricants, etc. is “trivial.”

Vehicle exhaust from auto maintenance and repair shops is “trivial.” General vehicle maintenance including vehicle exhaust from repair facilities is “trivial.”

### Oregon

Automotive repair shops or storage garages are “insignificant.”

### San Diego

Virtually all processes that one would typically expect to see in a repair or maintenance shop are “trivial.” Some equipment is “significant” when used on fiber reinforced plastics.

### San Francisco / BAAQMD

All equipment for “buffing, carving, cutting, drilling, grinding, machining, planing, routing, sanding, sawing, shredding, stamping or turning” wood, metals, plastics, rubber or certain other materials is insignificant provided “organic emissions” from coolants or lubricants or cutting oils are less than 150 lb/day. (Rule 2-1-121.1.)

### Washington

Repair and maintenance activities, not involving installation of an emission unit and not increasing potential emissions of a regulated air pollutant, are “trivial.”

## **SALT BATH QUENCHING OPERATIONS**

### EPA White Paper

“Salt baths using non-volatile salts that do not result in emissions of any regulated air pollutant” are “trivial.”

### Connecticut

Salt baths using non-volatile salts that do not result in emissions of any regulated air pollutants are “insignificant.”

### Georgia

Salt baths using non-volatile salts that do not result in emissions of any regulated air pollutants are “trivial.”

### Maine

“salt baths using non-volatile salts and not used in operations which result in air emissions” are trivial.

### San Diego

Significant.

### Washington

Salt baths using non-volatile salts and not used in operations which result in air emissions are “trivial.”

## **SOLVENT CLEANING**

### EPA White Paper

Cleaning for plant repair and maintenance is “trivial” if not subject to a VOC or HAP control requirement.

### Maine

Batch solvent distillation, not greater than 55 gallons batch capacity is “insignificant.”

### San Diego

Cold solvent cleaning tanks, vapor degreasers and paint stripping tanks with a capacity of one gallon or less or a surface area of 1 ft. or less are “insignificant.”

### San Francisco / BAAQMD

Wipe cleaning with unheated fluids containing <10% VOC, or with heated fluids containing <2.5% VOC, are “insignificant.” (Rule 2-1-118.4 and .5)

Wipe cleaning operations that emit less than 150 lbs/yr of VOC or use less than 20 gallons/yr of solvent are “insignificant.” (Rule 2-1-118.9)

Unheated solvent cleaning units with a capacity of less than 1 gallon or a surface are of less than one square foot are “insignificant.” (Rule 2-1-1 18.6)

Larger solvent cleaning units are “insignificant” if the capacity is 35.1 gallons or less, and the surface area is 7 square feet or less, and the solvent has a boiling point of 302°F or more, and the solvent is not sprayed. (Rule 2-1-1 18.7)

#### Washington

Batch solvent distillation, not greater than 55 gallons batch capacity, is “insignificant.”

Cold decreasing processes, not using air toxics, air-vapor interface not more than 10 square feet, or using a solvent with a true vapor pressure of not more than 30 mm Hg, are “trivial.”

### **SOLVENT RECYCLING**

#### White Paper

No discussion.

#### San Diego

On-site solvent recovery stills with a batch capacity of 7.5 gallons or less are “insignificant” provided they emit <5 lbs/day of VOCs.

#### San Francisco / BAAQMD

Batch solvent recycling is insignificant if 50% or more of the recycled solvent is used on site, heat input capacity is less than 1 million Btu/hr, and batch capacity is less than 150 gallons. (Rule 2-1-1 18.8)

### **STEAM**

#### EPA White Paper

Steam vents and safety relief valves, steam leaks, steam cleaning operations, steam sterilizers, and steam-heated drying ovens are “trivial.”

#### Connecticut

Steam vents and safety relief valves, steam leaks, steam cleaning operations, and steam sterilizers are “insignificant.”

#### Florida

Steam generators operating no more than 400 hours per year, having a total heat input individually or collectively equaling 100 million Btu/hr or less and fired by natural gas and/or

fuel oil containing no more than 1.5 percent sulfur, are “insignificant,” provided construction was commenced on or before June 9, 1989, and the source has not been modified or reconstructed since that date.

Steam and hot water generating sources located within a single facility and having a total heat input of 50 million Btu/hr or less, and fired exclusively by natural gas except for periods of natural gas curtailment during which fuel oil containing no more than one percent sulfur is fired, are “insignificant,” provided construction was commenced on or before June 9, 1989, and that source has not been modified or reconstructed since that date. Sources whose construction was commenced after June 9, 1989 are subject to a 10 million Btu/hr permitting exemption.

Steam cleaning equipment is “trivial.”

#### Georgia

“Steam cleaning and/or steam sterilization operations” are “trivial.”

Steam leaks, steam traps, steam vents and/or steam safety relief valves are “trivial.”

#### Maine

Steam sterilizers, steam cleaning operations, and steam vents and leaks are “trivial.”

#### Louisiana

Steam cleaning operations are “trivial.”

#### Mississippi

Steam vents and leaks are “insignificant.”

#### Oregon

Non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems are “insignificant.” Non-contact steam condensate flash tanks and non-contact steam vents on condensate receivers, de aerators and similar equipment are also “insignificant.”

#### San Diego

No specific provisions.

#### South Carolina

Sources emitting only steam, air, nitrogen, oxygen, carbon dioxide, or any physical combination of these are “trivial.”

### Washington

Steam cleaning operations, steam vents and safety release valves, steam leaks, and steam sterilizers are “trivial.”

### **TEMPORARY ACTIVITIES, RESEARCH, AND PILOT PLANTS**

#### EPA White Paper

The White Paper states that temporary activities may be “trivial.”

#### San Francisco / BAAQMD

Experimental operations that the APCO has determined to exempt from regulations are “trivial.”

Temporary replacements for units under permit, which will be operated in compliance with that permit, are “insignificant” if operated for three months or less. (Rule 2-1-104)

New or modified pilot plants are “trivial.” These sources are subject to temporary source regulations.

Temporary construction activities are “insignificant.”

No specific provision.

### Washington

Pilot plants “may be determined to be insignificant on a case-by-case basis by the permitting authority.”

### **WASHING/CLEANING (WITHOUT VOCs)**

#### EPA White Paper

Not discussed, except for laundry

### Georgia

Equipment used for the washing or drying of fabricated products provided that no VOCs are emitted in the process and that no oil or solid fuels are burned is “trivial.”

Cold cleaners having an air / vapor interface of not more than 10 square feet and that do not use a halogenated solvent are “insignificant.” Non-routine clean-out of tanks and equipment for the purposes of worker entry or in preparation for maintenance or decommissioning is “insignificant.”

Devices used exclusively for cleaning metal parts or surfaces by burning off residual amounts of paint, varnish, or other foreign material, are “insignificant,” provided that such devices are equipped with afterburners.

Cleaning operations using alkaline phosphate cleaners and associated cleaners and burners are “insignificant.”

#### Maine

Cleaning and stripping activities and equipment, using solutions having less than one percent VOCs by weight are “insignificant.”

Water blast cleaning and stripping operations are “trivial.”

Metal cleaning or finishing using tumblers is “trivial.”

Vacuum cleaning equipment and operations where the fugitive emissions is indoors are “trivial.”

#### Mississippi

Cleaning glass and metal objects is “trivial” if no VOCs are used and no oil or solid fuel is burned.

Alkaline/phosphate washers and associated cleaners and burners are “trivial.”

#### San Diego

These activities are “insignificant” if materials being cleaned do not have residues or organic solvents, and VOC emissions are <5 lbs/day.

#### South Carolina

Batch cold cleaning machines, small maintenance cleaning machines, and parts washers using only non-halogenated solvents or CFC-113 and not subject to 40 C.F.R. 60, subpart JJ are “trivial.”

#### Washington

Cleaning and stripping activities and equipment, using solutions having less than one percent VOCs by weight, are “trivial.”

## **WATER HEATING, FILTRATION, TREATMENT, DEMINERALIZATION, AND COOLING**

### EPA White Paper

Process water filtration systems, demineralizers, demineralized water tanks and demineralizer vents, and boiler water treatment operations, are “trivial.”

Cooling towers are identified as not being trivial.

### Connecticut

Process water filtration systems and demineralizers, demineralized water tanks and demineralizer vents, boiler treatment operations, not including cooling towers, are “insignificant.”

### Georgia

Demineralized water tanks and demineralizer vents are “trivial.”

Process water filtration systems and demineralizers are “trivial.”

### Maine

Space heaters and hot water heaters using natural gas, propane or kerosene and with a rated input less than 5 MMBtu/hr are “insignificant.”

Water cooling towers and ponds, not using chromium-based corrosion inhibitors, not used with barometric jets or condensers, not greater than 10,000 gpm, not indirect contact with gaseous or liquid process streams containing regulated air pollutants are “insignificant.” “Water cooling towers processing exclusively non-contact cooling water” and “freshwater cooling towers” are “trivial.”

Municipal and industrial waste water chlorination facilities of not greater than one million gallons per day capacity are “insignificant.”

Water and waste water treatment units, provided the facility performs only the following function of disinfecting, softening, filtration, flocculation, stabilization, taste and odor control, clarification, sedimentation and neutralization are “insignificant.”

Demineralization and oxygen scavenging (deaeration) of water is “trivial.” Demineralizer tanks are “trivial.”

### Mississippi

Water heaters used for domestic purposes only are “trivial.”



Water treatment systems for process cooling water and boiler water, including tanks, reservoirs, containers and cooling towers are “trivial,” if they do not come into contact with gaseous or liquid process streams containing carbon compounds, sulfur compounds, halogens or halogen compounds, cyanide compounds, inorganic acids, or acid gases.

Demineralize water storage tanks, acid storage tanks, process water tanks, and effluent neutralizing tanks and systems are “insignificant.”

### Oregon

Demineralized water tanks, pre-treatment of municipal water, including use of deionized water purification systems, and process raw water filtration systems are “insignificant.”

Industrial cooling towers that do not use chromium-based water treatment chemicals are “insignificant.”

Oil/water separators in effluent treatment systems are “insignificant.”

### San Diego

No specific provisions.

### San Francisco / BAAOMD

Cooling towers and ponds are “trivial” unless they evaporate process water. (Rule 2-1-128.4)

Oil /water separators processing less than 200 gal/day of waste water are “insignificant.” (Rule 2-1-128.14)

### South Carolina

Non-contact cooling towers, water treating systems for non-contact process cooling water or boiler feedwater, and water tanks, reservoirs, or other containers designed to cool, store, or otherwise handle water (including rainwater) are “trivial.”

Water heaters used solely for domestic purposes are “trivial.”

Boilers and space heaters of less than  $1.5 \times 10^6$  Btu/hr rated input capacity which burn virgin fuel are “insignificant.”

### Washington

Water cooling towers and ponds, not using chromium-based corrosion inhibitors, not used with barometric jets or condensers, not greater than 10,000 gpm, not emitting regulated air pollutants, not indirect contact with gaseous or liquid process streams containing regulated air pollutants, are “insignificant.”

Municipal and industrial water chlorination facilities of not greater than 20 million gallons per day capacity are “insignificant,” but the exemption does not apply to waste water treatment.

Demineralize tanks, and demineralization and oxygen scavenging of water are “trivial.”

#### Wisconsin

“Convenience water heating” is “insignificant.”

Demineralization and oxygen scavenging of water for boilers are “insignificant.”

### **WELDING, BRAZING, SOLDERING, CUTTING**

#### EPA White Paper

Brazing, soldering and welding equipment, and cutting torches, are “trivial” when used for maintenance, repair and upkeep or repair shop activities whether not they emit HAP metals. The same equipment used in manufacturing is “trivial” only if it does not emit HAP metals.

#### Connecticut

Brazing, soldering and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of HAP metals, are “insignificant.”

#### Florida

Brazing, soldering or welding equipment is “trivial.”

#### Georgia

Brazing, soldering and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of metal HAPs is “trivial.”

Brazing, soldering and welding equipment, and cutting torches related to manufacturing and construction activities whose emissions of HAP fall below 1,000 lbs/yr are “insignificant.”

#### Maine

Welding using not more than one ton per day of welding rod is “insignificant.”

Brazing, soldering and welding equipment and oxygen-hydrogen cutting torches for use in cutting metal where components of the metal do not generate HAPs or HAP precursors are “trivial.”

Plastic pipe welding is "trivial"

### Mississippi

Brazing, soldering or welding equipment that is used intermittently or in a non-continuous mode is “trivial.”

### San Diego

Brazing and welding equipment is “insignificant.”

### San Francisco / BAAQMD

Brazing, soldering and welding equipment is “insignificant.”

### South Carolina

Brazing, soldering or welding equipment used for regular maintenance at the facility is “trivial.”

### Virginia

Brazing, soldering and welding equipment used as an auxiliary to the principal equipment at the source is “trivial.”

### Washington

Welding using not more than one ton per day of welding rod is “insignificant.”

Brazing, soldering and welding equipment and cutting torches are “trivial.”

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